27-570

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 255.

WILLIAM A. STUART, APPELLANT,

vs.

C. S. GAY AND MARGARET L. GAY, HIS WIFE, JOHN ECHOLS, TRUSTEE OF SAID MARGARET L. GAY, AND JOHN W. JOHNSTON, TRUSTEE OF E. C. BOYD.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

FILED JULY 24, 1885.

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INDEX.

	Original.	Print.
Caption	1	1
Bill of Complaint	1	1
Exhibit No. 2—Deed of trust between James Calwell *et al.*, Nov. 3, 1841	16	7
No. 7—Deed of trust between The White Sulphur Springs Co. *et al.*, October 15, 1857	26	11
Schedules of bonds issued, &c.	35	16
Order of reference	45	21
Order for continuance	47	22
Order making Nickell's administrators parties defendant, &c.	48	22
Order for postponement	50	23
Order recommitting cause, &c.	52	24
Order to show cause for contempt	54	25
Order continuing rule to show cause	55	26
Order confirming commissioner's report	55	26
Order of April 24, 1872	56	26
Order of January 21, 1873	58	27
Order of April 24, 1873	60	28
Order of December 22, 1873	61	28
Order of May 6, 1874	63	29
Order of May 7, 1874	64	29
Order to pay costs, &c., May 8, 1874	65	30

JUDD & DETWEILER, PRINTERS, WASHINGTON, AUGUST 23, 1887.

	Original.	Print.
Order of October 2, 1874, recommitting cause	66	30
Clerk's report, December 1, 1874	69	31
Order of February 8, 1875	70	32
Order of April 28, 1875	73	33
Order of August 20, 1875	78	35
Order of October 15, 1875	80	36
Order of April 24, 1876	81	37
Order of April 28, 1876	82	37
Report of commissioner, No. 1	89	40
Order of November 21, 1876	125	72
Order of November 23, 1876	126	72
Order of November 24, 1876	127	73
Order of November 25, 1876	129	74
Order of May 4, 1877	130	74
Order of May 5, 1877	131	74
Order of November 12, 1877	139	78
Order of May 4, 1878	140	78
Order of May 7, 1878	141	78
Order of May 9, 1878	143	79
Order of July 9, 1878	144	79
Order of August 2, 1878	145	80
Order of September 9, 1878	146	80
Order of November 7, 1878	147	81
Order of November 9, 1878	148	81
Order of November 26, 1878	151	82
Order of June 5, 1879	152	83
Order of October 13, 1879	154	84
Commissioner's report of sale	155	84
Order of November 5, 1879	161	87
Order of November 18, 1879	162	87
Orders of November 19, 1879	163	87
Order of December 20, 1879	171	90
Order of March 16, 1880	173	91
Order of May 4, 1880	175	92
Special commissioner's report of sale	177	93
Order of May 7, 1880	181	94
Order of May 10, 1880	182	95
Supplemental report of special commissioner	184	96
Order of May 15, 1880	187	97
Order of August 25, 1880	188	97
Order of November 6, 1880	190	98
Order of November 11, 1880	190	98
Report of special commissioner	191	99
Order of May 16, 1881	193	100
Order of March 1, 1882	194	100
Order of May 12, 1882	196	101
Order of August 31, 1883	197	101
Order of November 5, 1883	197	102
Order of November 26, 1883	198	102
Order of January 5, 1884	199	102
Order of May 14, 1884	200	103
Report of settlement	201	103

	Original.	Print.
Exceptions to report of settlement	205	108
Order of May 12, 1885	207	109
Commissioner's report of sale	208	109
Order of May 13, 1885	210	110
Order of May 22, 1885	211	110
Petition of W. A. Stuart	212	111
Exhibits to petition	222	115
Order of May 25, 1885	228	118
Answer to rule by Wm. A. Stuart	234	120
Exhibits to answer to rule	245	124
Clerk's certificate	262	132
Petition for appeal	263	132
Order allowing appeal, &c.	277	138
Bond	278	138
Citation	284	141
Proof of service of citation	285	142

1 Pleas before the Honorable John Jay Jackson, judge of the district court of the United States for the district of West Virginia, at Charleston, in said district, on Monday, the 25th day of March, A. D. 1885, and in the 109th year of the Independence of the United States of America.

Be it remembered that heretofore, to wit, on the — day of March, 1868, came Charles S. Gay and Margaret L. Gay and others and filed in the clerk's office of the district court of the United States for the district of West Virginia, at Charleston, their bill of complaint against the White Sulphur Springs Company and others, the original draft of which bill, as afterwards proved by the affidavit of William A. Quarrier and filed to supply the loss of said bill, is in the words and figures following, to wit:

The bill of complaint of Charles S. Gay and Margaret L. Gay, his wife; John Echols, trustee of Margaret L. Gay; Jane C. Boyd and John W. Johnston, her trustee, and Elizabeth E. Crockett, citizens and inhabitants of the State of Virginia, who sue as well for themselves as for all other creditors who have liens upon the real estate belonging to the White Sulphur Springs
2 Company, situate in the county of Greenbrier, West Virginia, whether said liens were created by the said company or by James Calwell, Frances Bedford, Elizabeth Copeland, William B. Calwell, James H. Calwell, Lewis M. Calwell, John B. Calwell, Edmund S. Calwell, Henry B. Calwell, and Bedford Calwell, or by any or either of them, against the White Sulphur Springs Company, a corporation doing business and having its principal office in the State of West Virginia; William B. Calwell, administrator of James Calwell, deceased; John H. Copeland and Samuel Price, executors of Frances Bedford; Elizabeth Copeland; Fleming B. Miller, trustee; William B. Calwell; Mason Mathews, trustee; Lewis M. Calwell, Edmund S. Calwell, John B. Calwell, Bedford Calwell, Joel McPherson, A. P. Caperton, in his own right and as executor of Hugh Caperton, deceased; A. T. Caperton & Andrew Campbell, surviving executors of Robert Campbell, deceased; Samuel Price, Mason Mathews, and Thomas Mathews, executors of Henry Erskine, deceased; Samuel C. Beard, administrator of Christopher Beard, deceased; Samuel Tuckwiller, administrator of David Tuckwiller, deceased; Paul McNeal, James M. Nickell; Thomas Mathews, surviving partner of Mathews, Paxton & Co.; Robert Dixon; Margaret P. Callison, executrix of Elisha Callison, deceased; John Sydenstricker, administrator of John Surbaugh, deceased; Floyd Estill, Jacob Eagle; James M.
3 Nickell, administrator of James Nickell; James Jarrett, Sr., Samuel Price, Jesse Bright, George White, Samuel McClung, James K. Hull, Andrew Johnson, administrator of George Johnson; James H. Nesmith, Patrick Beirne, Thomas A. Bell, Samuel C. Ludington, George L. & W. H. Peyton, and David Watts, citizens and inhabitants of the State of West Virginia and the judicial district thereof.

To the Hon. John J. Jackson, Jr., judge of the United States district court for the judicial district of West Virginia, sitting at Charleston:

Humbly complaining to your honor the complainants named in the caption of this bill respectfully represent—

That on the 3d day of March, 1836, James Calwell & Polly, his wife; Frances Bedford and Elizabeth Copeland, then being the owners in fee of a tract of land situate in the county of Greenbrier, and now within the limits of this State, containing nine hundred and fifty acres, and upon which is situate the celebrated mineral spring known as the Greenbrier White Sulphur, conveyed the same to Andrew Stevenson, John T. Brown, Fleming B. Miller, & James McFarland, Jr., in trust to secure and indemnify parties who would subscribe to a loan of $100,000 which the said owners desired to effect, the said loan to bear interest and to be repaid in five years from date.

4 The trust deed recited that to this loan Richard Singleton, of the State of South Carolina, had subscribed the sum of $30,000; John Tabb, of Norfolk, had subscribed the sum of $15,000; John V. Wilcox, of Petersburg, had subscribed the sum of $15,000; and James McFarland, of Petersburg, had subscribed the sum of $10,000, for which sums they severally received certificates, and in order to raise the residue of said sum of $100,000 the said grantors executed six certificates of debt, each for the sum of $5,000, and deposited the same in the Bank of Virginia at Richmond, with authority to said bank to sell the same, all of which will appear by reference to a copy of said deed herewith filed and made part of this bill and marked Exhibit No. 1. Three of the trustees in said deed, to wit, Andrew Stephenson, John T. Brown, and James McFarland, Jr., have departed this life. These compl'ts are not aware how many of the certificates of debt of the denomination of $5,000, which were placed in the hands of the Bank of Virginia, were sold by said bank, nor do they know how much of the indebtedness secured by said trust deed has been paid.

That on the 3d day of November, 1841, the said James Calwell and Polly, his wife; William B. Calwell, Frances Bedford, and Elizabeth Copeland conveyed to Mason Mathews and Gustavus A. Crockett, trustees, the above-described tract of land, containing, as aforesaid, 950 acres; also a tract of land

5 known as the Brown tract, containing one thousand acres; also a tract of 5,000 acres purchased of Hector & French; also a tract of 800 acres purchased from Richard Dickson, in trust to secure Henry Erskine the sum of $34,297.00, with interest from date, and the further sum of $3,150.00, with interest from date. There was also conveyed by said deed a number of slaves, horses, sheep, hogs, and a very large quantity of beds, mattrasses, sheets, and other furniture, which had heretofore been used about said watering place, all of which will more fully appear by reference to an office copy of said deed, herewith filed as Exhibit No. 2. One of the trustees in this deed, Gustavus A. Crockett, has departed this life. The deed also provided that if default was made in the payment of the sum

secured by this deed on 3d day of November, 1842, that the trustees should make sale.

That on the 10th day of October, 1842, Polly Calwell, the wife of James Calwell, having departed this life, and her interest having descended to her children, James Calwell, the husband, together with the children of said Polly, to wit, William B. Calwell, James H. Calwell, Lewis M. Calwell, Edmund S. Calwell, John B. Calwell, Henry B. Calwell, & Bedford Calwell, together with Frances Bedford & Elizabeth Copeland, conveyed all the lands and personal estate mentioned in Exhibit No. 2 to William Cary & Joel McPher-
6 son in trust to secure a large number of creditors, whose names are fully set out and described in said deed, and whose debts are enumerated in a schedule attached thereto, and all of said creditors who reside in this judicial district are hereinafter made parties defendants to this bill. This deed provided that if default should be made in the payment of the debts in said deed secured, and said default should continue until 1st January, 1848, that the trustees should make sale. One of the trustees, William Cary, has departed this life. A copy of this deed is herewith filed and made a part of this bill, marked No. 3.

On 22d day of November, 1853, John B. Calwell, Henry B. Calwell, Lewis M. Calwell, Edmund S. Calwell, Bedford Calwell & wife, William B. Calwell, and John F. Miller, heirs-at-law of James Calwell and Polly, his wife, and Elizabeth Copeland and Frances Bedford, being the then owners of the White Sulphur Springs estate, conveyed the same to William H. McFarland. In this conveyance there is embraced all the tracts of land mentioned and described in Exhibits 2 & 3, as well as the original tract upon which the spring is situate, the whole estimated to contain about 7,000 acres; but this conveyance was made upon the following trust: That the said McFarland should make sale of the estate; that he should re-
tain ten per cent. commissions; that out of the proceeds he
7 should pay off the debts due and secured upon the land, whether by trust deed, mortgage, or otherwise, and, after payment of said debts, the residue should be paid over to the grantors, &c., &c. An office copy of this deed is herewith filed, marked Exhibit No. 4.

On 1st May, 1857, William H. McFarland and William B. Calwell executed a deed by which the said McFarland conveyed the White Sulphur Springs property (estimated as aforesaid as 7,000 acres) to Jeremiah Morten, Matthew F. Maury, Allen T. Caperton, R. H. Maury, Alexander K. Philips, A. F. D. Gifford, James Hunter, and J. Warren Slaughter, and the said William B. Calwell conveyed to the same parties all the household and kitchen furniture, farming utensils, horses, cattle, hogs, &c., &c., upon the premises. The consideration for this purchase was $600,000.00, of which $200,000.00 was paid in cash, and, as it was estimated that there were debts due and secured upon the property to the amount of $400,000.00, the purchasers covenanted and agreed that they would accept a charter heretofore granted them by the Legislature of Virginia, and would organize under the same and issue to the creditors the bonds of the

company for their several debts, and would secure the said bonds by trust deed executed upon the entire property, with power of sale in the event the said bonds were not paid within ten years
8 from their date. A copy of said deed is herewith filed, marked Exhibit No. 5.

On 1st May, 1857, Jeremiah Morten & wife, Matthew F. Maury and wife, Robert H. Maury & wife, A. F. D. Gifford & wife, A. W. Slaughter & wife, James Hunter & wife, Allen T. Caperton & wife, & Alexander H. Phillips conveyed all the White Sulphur Springs estate (estimated as aforesaid at 7,000 acres) to the White Sulphur Springs Company, a corporation created by the State of Virginia. A copy of this deed is herewith filed, marked Exhibit No. 6.

On 15th October, 1857, the White Sulphur Springs Company executed a deed of trust to Peachy R. Gratton, John Echols, & Robert F. Dennis, trustees, to secure all the creditors who had liens against the White Sulphur Springs estate and all those who had just claims against James Calwell & Wm. B. Calwell for debts incurred in operating said springs, although they had no liens on the estate itself. This deed conveyed the entire estate (estimated at 7,000 acres), and provides that the Calwells shall be released from the debts, and that the company shall execute its bonds for the said claims, with interest computed up to the 15th day of October, 1857, payable ten years after date, interest to be paid annually; but all the creditors were to retain their original priority of lien. No new bonds were to be
9 executed for the debts secured by the trust deed marked Exhibit No. 1; said deed was to remain and retain its original priority. A schedule showing the names of the bondholders, the amounts due them, &c., &c., is filed and made a part of this deed. This deed also conveys a large quantity of personal property, which is also described in a schedule filed with the deed, and is subject to the general trusts mentioned. A copy of this deed, together with the several schedules attached thereto, are herewith filed as parts of this bill, marked No. 7.

On 15th October, 1857, the said White Sulphur Springs Company executed a second deed of trust to the said Echols, Gratton & Dennis, explaining and deferring the powers of the trustees and the rights and powers of the creditors. An office copy of said deed is herewith filed as Exhibit No. 8.

On 3d September, 1858, the said White Sulphur Springs Company executed a third deed of trust to the same trustees securing certain creditors, whose names and debts are fully described and set out in the said deed. A copy of said deed is herewith filed and made part of —, marked Exhibit No. 9.

On 18th April, 1861, the said White Sulphur Springs Company executed a deed of trust to Thomas Matthews and Joseph J. Halsey, trustees, by which they conveyed the original estate, estimated as aforesaid as 7,000 acres, together with also a tract of land sit-
10 uate on the turnpike road leading from White Sulphur Springs to Covington, containing 2,800 acres, purchased of Hoke, in trust to secure seventy-five coupon bonds, each for the sum of $1,000 *each*, executed by one or more of the following per-

sons, to wit, Jeremiah Morton, A. T. Caperton, J. Prosser Tabb, Robert B. Bolling, Richard H. Dulaney, Philip St. George Cooke & R. W. Carter, on 15 January, 1861, payable two years after date. Some of these bonds were executed by one of the above parties alone, some of them by two of the above parties, and some by three of them, and all of said bonds were sold or discounted for the benefit of the company; also to secure the payment of one hundred and thirty-two coupon bonds of the aggregate value of $66,000.00, and to indemnify and save harmless the parties who issued the first-named bonds, and to indemnify and save harmless the same parties who endorsed the last-named bonds. This deed includes all the personal property used in and about the springs. A copy of said deed is herewith filed, marked Exhibit 10.

All of the deeds referred to in this bill are duly and properly recorded in Greenbrier county, where the lands are situate.

On 8th day of January, 1868, Allen T. Caperton & Wm. B. Calwell, who had been duly authorized by a resolution of the board of directors of the White Sulphur Springs Company,
11 executed a lease to George L. & W. H. Peyton, by which they demised the entire estate of the company to the said Peytons for the annual rent of $12,000.00 per annum for the term of five years, beginning on 1st day of April, 1869, the rent to be paid to R. H. Maury, treasurer of the company, and by him to be applied as follows: $1,000 per annum salary to Wm B. Caldwell, the president of the company, and the balance to be applied "to the interest of the debts known as the Singleton debts and the Erskine debt," meaning thereby the debts fully described and set out in the deeds of trusts filed herewith and marked Exhibits Nos. 1 & 2.

Then complainants alledge that R. H. Maury is a non-resident of this judicial district, and that he resides in Richmond, Virginia, and that comp'ts do not desire at this time to disturb the lease so made as aforesaid, but rather to continue the same until the proper accounts are taken and the cause matured for a decree of sale; but they alledge that these rents should be retained and kept within the jurisdiction and under the control of the court and be by the court applied to the purpose specified in the lease, to wit, the payment of the interest on the debts which constitute the first liens on the property. That there is danger that if these rents are allowed to be taken out of the jurisdiction of the court that they be attached and
12 sequestered and applied to debts of an inferior dignity. A copy of the lease is herewith filed, marked Exhibit X.

It will be recollected that by the deed of 3d November, 1841, executed by James Calwell & others to Matthews & Crockett to secure Henry Erskine (Exhibit No. 2), the said Erskine acquired the second lien on the tract of 950 acres, upon which the main White Sulphur Springs and all the hotels, cabins, buildings, outhouses, &c., &c., are situated, and the first lien upon the other tracts of land, which constitute the residue of the 7,000 acres, which now constitute the main estate of the company. About the — day of ——, 18—, Henry Erskine departed this life, having first made and published his last will and testament, a copy of which is made an exhibit to

this bill, marked Exhibit No. 11. By this will Samuel Price, Mason Matthews, and Thomas Matthews were appointed executors, and the debt due said Erskine under and by virtue of the trust deed, Exhibit No. 2, was devised to Thomas Matthews, trustee, for the sole and separate use of the three daughters of testator, to wit, Margaret L. Gay, wife of Charles S. Gay, Jane C. Boyd (now a widow), and Elizabeth E. Crockett (also a widow), jointly and equally. Under the provisions of the deed of trust executed by the White Sulphur Springs Company on the 15th day of October, 1857, the said company aggregated the debt due estate of Henry Erskine
13 and issued and delivered to Samuel Price, Mason Matthews, & Thos. Matthews three coupon bonds, each for the sum of $21,848.69c., and bearing interest from date, having coupons attached for said interest. The executors assigned one of these bonds to the trustee of Margaret L. Gay and one to the trustee of Jane C. Boyd, and the other to the trustee of Elizabeth E. Crockett. A portion only of the interest of each of these bonds has been paid. The principal and the larger portion of the interest of the bonds is now due and unpaid. Copies of the bonds are herewith filed and made a part of this bill, marked Nos. 12, 13, & 14. Thomas Matthews resigned his position as trustee under the will of Henry Erskine, and by a series of decretal orders, herewith filed, John Echols became trustee for Margaret L. Gay, John W. Johnston became trustee for Jane C. Boyd, and Samuel Price became trustee for Elizabeth E. Crockett.

The complainants in this cause are anxious to enforce the collection of the three coupon bonds last herein described, and for that purpose have resorted to this honorable forum.

They alledge that the creditors who have liens on the estate herein sought to be subjected to sale are exceedingly numerous; that a very large number of them reside outside of the jurisdiction of this
14 court, and that by the manner in which these complainants have sued all creditors have a right by petition to be made parties to the same; if they be citizens of West Virginia, parties defendants; if citizens of other States, parties plaintiffs; and that full provision is made by the structure of this bill to protect all classes of creditors; they are therefore advised that they are not bound to make the non-residents persons who are interested in the subject-matter parties def'ts to this suit.

James Calwell has departed this life and Wm. B. Calwell has qualified as his administrator; Frances Bedford has departed this life and John H. Copeland & Samuel Price are her administrators; Hugh Caperton has departed this life and A. T. Caperton is his executor; Robert Campbell has departed this life and A. T. Caperton & Andrew Campbell are his executors; Christopher Beard has departed this life and Samuel C. Beard is his administrator; David Tuckwiller has departed this life and Samuel Tuckwiller is administrator; Elisha Callison has departed this life and Margaret P. Callison is executrix; John Surbaugh is dead and John Sydenstricker is his administrator; James Nickell is dead, James M. Nickell is administrator; George Johnson is dead and Andrew Johnson is his administrator.

Forasmuch, then, as these complainants are without remedy, save in this forum, they pray that the defendants named in the
15 caption of this bill, who are all residents of this judicial district, be made parties def'ts to this bill; that this cause be referred to a master commissioner; that all creditors claiming lien be required to prove the same; that proper accounts be taken; that priorities be established; that the lands and personal property of the White Sulphur Springs Company be subjected to sale; that until a sale is decreed that the court may, by its proper officers, collect and pay out the rents to the parties who have the first liens on the property; that these complainants have satisfaction of the debts due them, and that they have such other, further, and general relief as the exigencies of their cause require.

CHARLES S. GAY.
MARGARET L. GAY.
JOHN ECHOLS.
JANE BOYD.
JOHN W. JOHNSON.
ELIZABETH CROCKETT.

MILLER & QUARRIER, *Sol's.*

The affidavit of William A. Quarrier, annexed to said draft of said bill, is in the words and figures following, to wit:

"In the District Court of the United States for the District of West Virginia. In Chancery.

GAY & *als.*, Compl'ts,
vs.
WHITE SULPHUR SPRINGS COMPANY & *als.*, Def'ts.

16 William A. Quarrier, attorney-at-law and counsel for the complainants in above-entitled cause, this day made oath before me that the paper-writing hereto annexed is the original draft of the bill of complaint in said cause, a true copy of which was the bill actually filed in the cause, and which was destroyed by fire.

WM. A. QUARRIER.

WEST VIRGINIA, *Kanawha County,* } *To wit:*

Subscribed and sworn to before me, in said county, this 30th day of November, 1874.

D. L. RUFFNER,
Notary Public for Kanawha County, West Virginia."

The deed of trust referred to in the foregoing bill as Exhibit No. 2 is in the words and figures following, to wit:

"This indenture, made this 3d day of November, in the year of our Lord one thousand eight hundred and forty-one, between James Calwell and Polly, his wife; William B. Calwell, Frances Bedford, and Elizabeth Copeland, of the first part, and Mason Mathews and

Gustavus A. Crockett, of the second part, and Henry Erskine, of the third part, witnesseth:

That the said James Calwell, William B. Calwell, Frances
17 Bedford, & Elizabeth Copeland are justly indebted to the said Henry Erskine in the sum of thirty-four thousand two hundred and ninety-seven dollars, bearing interest until paid, due by bond executed this day, and also the further sum of three thousand one hundred & fifty dollars, due by bond of William B. Calwell, which bonds are due on the third of November, 1842, and which will more fully appear by reference to said bonds; and the said James Calwell, William B. Calwell, Frances Bedford, and Elizabeth Copeland are willing and desirous to secure the said bond and debt to the said Erskine.

Now, this indenture witnesseth: That, for and in consideration of the premises and also for the further consideration of five dollars to the said James Calwell & Polly, his wife, William B. Calwell, Frances Bedford, & Elizabeth Copeland, parties of the first part, in hand paid by the said Mason Mathews & Gustavus A. Crockett at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, they, the said parties of the first part, have given, granted, bargained, sold, aliened, enfeoffed, released, & confirmed, and by these presents do give, grant, bargain, sell, alien, enfeoff, release, & confirm, to the said Mason Mathews and G. A. Crockett, their heirs & assigns, forever the following tracts or parcels of land lying & being situate in the county of Greenbrier, to wit: First,

all that tract or parcel of land known as the White Sulphur
18 Springs tract, lying and being on the waters of Howard's creek, in said county, containing upwards of 900 acres, being the same land formerly the property of Michael Bowyer, dec'd, descended to his heirs-at-law, and now the property of the aforesaid parties of the first part, embracing the White Sulphur Springs & all the appurtenances belonging thereto; a reference to the deeds & papers of record in the clerk's office of said county will more fully show the quantity & boundaries and the interest of each of the parties therein; second, one other tract or parcel of land adjoining the above, which is known as the Brown tract, containing 1,000 acres, which was deeded from Samuel Brown & others to James Calwell, & which deed is of record in the clerk's office aforesaid; a reference to the same will more fully show; and other small tracts and surveys adjoining the above-described tracts; one other tract, of 5,000 acres, deeded to Wm. B. Calwell, which was purchased of Hector & Guy D. French, which deed is of record in the clerk's office aforesaid, and will more fully show; one other tract, of over 800 acres, purchased by Wm. B. Calwell of Richard Dickson, lying on the north branch of Howard's creek, adjoining the lands of James Wylie, D. Surber, Jno. Handly, & others; a reference to the deed from

said Dickson to said Wm. B. Calwell will more fully show; and,
19 moreover, to embrace all the lands that belong to either of the above-named James Calwell, Wm. Calwell, Frances Bedford, & Elizabeth Copeland, either their joint or separate interest in

the aforesaid tracts or parcels of land, either jointly or separately, that the said James Calwell & Polly, his wife, Wm. B. Calwell, Frances Bedford, & Elizabeth Copeland have in the White Sulphur Springs tract of land, and all the interest, right, & title that they or either of them have in the other herein mentioned and described tracts of land & the other tracts adjoining the White Sulphur Springs tract that have accrued or come to them either by descent, devise, purchase, or otherwise, in and to the White Sulphur Springs tract, or any of the tracts of land owned or claimed by either of the contracting parties of the first part, either jointly or severally; and it is understood that each of the parties of the first part convey their joint and separate interest in the aforesaid recited tracts of land, with all the buildings & appurtenances thereto belonging; also the following slaves & other personal property of the s'd James Calwell, hereinafter designated, viz: One negro man, named John (a waggoner); also one, named Davis (a blacksmith); also one, named Robert (a house boy); also one, named Charles (a cook), and his
20 wife, named Kitty; also a mulatto boy, named Charles, about 15 or 16 years of age; one negro man, named George Cook, & one, *one* named George Harris, the said George Harris having a term of years to serve; also one, named Powhattan (blacksmith); also one negro boy, named Horrace, about 12 years of age; also one, named Randolph, about 11 or 12 years of age; one other, named Com. or Com-odore (deaf); one negro woman, named Mary; also one, named Charlotte, & two children, a girl & a boy; one woman, named Ellen, & her child; also one negro girl, named Mary, about 15 years old; also one girl, named Adaline, about 12 years old; also 600 ma-trasses, 200 feather beds, 1,200 blankets, 1,000 pair of sheets, 1,000 pillow-cases, 1,000 bed-spreads and counterpanes, 600 bedsteads, single and double, 200 table-cloths, 2,000 Windsor chairs, 500 small tables, 500 looking-glasses; also 20 horses & mules, 3 waggons, 2 carts, 20 steers, 50 cows, 3 full-blood Durham cows, one full-bood Durham bull, one full-blooded Blakewell ram, 2 ewes, one Timoleon stud horse, 200 sheep, 150 hogs, with all & singularly the appurtenances to the said tracts or parcels of land belonging or in anywise appertaining; that the said James Calwell & Polly, his wife, Wm. B. Calwell, Frances Bedford, & Elizabeth Copeland have title to — of the above-described tracts of land, either in law & equity,
21 separately or jointly; and also all the slaves & other personal property and the future increase of the females of the said slaves, and the increase of the live stock, and all the estate, right, title, & interest of the said James Calwell and Polly, his wife; Wm. B. Calwell, Frances Bedford, & Elizabeth Copeland in & to the said granted or intended to be granted tracts or parcel of land & premises; to have and to hold the said hereby granted or intended to be granted tracts or parcels of land and premises, with their appurtenances belonging, to each of the parties of the first —, either jointly or severally, together with the aforesaid slaves & the future increase of the female slaves thereof and all the personal property hereby conveyed belonging to the said James Calwell, unto the said Mason Mathews & G. A. Crocket, their heirs, ex'ors, adm'rs & assigns, forever, to the only

proper use and behoof of the said Mathews & Crockett, their heirs, ex'ors, adm'rs, & assigns, forever; and the said James Calwell & Polly, his wife; William B. Calwell, Frances Bedford, & Elizabeth Copeland, for themselves, their heirs, ex'ors, & adm'rs, do hereby covenant, promise, & agree to & with the said Mason Mathews & G. A. Crockett, their heirs, ex'ors, adm'rs, and assigns, forever in manner & form following—that is say, that the said James Calwell & Polly, his wife; Wm. B. Calwell, Frances Bedford, & Elizabeth
22 Copeland, their heirs, ex'ors, adm'rs, the aforesaid tracts or parcels of land & premises, with their appurtenances belonging, either in whole or in part, jointly or severally, belonging to the parties of the first part, together with the aforesaid slaves & future increase of the females and all the other personal property herein conveyed belonging to the said James Calwell, unto the said Mason Mathews and G. A. Crockett, their heirs, ex'ors, adm'rs, and assigns, against them & their heirs and against all persons whatsoever shall & will warrant and forever defend by these presents; upon trust, nevertheless, that the said Mason Mathews & Gustavus A. Crockett, their heirs, ex'ors, and adm'rs, shall permit the said parties of the first part to remain in quiet and peaceable possession of the said tracts or parcels of land & premises, with their appurtenances, and the said James Caldwell in possession of the aforesaid slaves & other personal property hereby conveyed, and to take the profits thereof to their own use until default be made in the said sum of $34,297.00, or until a requirement of the closing of this trust by said Erskine; and upon this further trust that they, the said Mason Matthews & G. A. Crockett, or either of them, or the survivor of either of them, or either of their ex'ors or adm'rs, shall & will so soon after the happening of such default of payment—that is, on the 3d
23 day of November, 1842, or as soon thereafter as the said Henry Erskine, his ex'ors, adm'rs, or assigns, shall require or the parties of the first part shall request, sell first the slaves and personal property of the said James, then the said tracts of land & premises, with the appurtenances, as above described, or such part of the hereby-granted premises as the said trustee or trustees or their representatives hereby authorized to act shall think sufficient for the purpose and shall think proper to sell, to be sold to the highest bidder for ready money, at public auction, after having fixed the time & place of sale and given four months' notice in some newspaper published in the city of Richmond, Washington, New York, and Philadelphia, of the time & place of the sale of the lands and appurtenances & the aforesaid slaves and other personal property, and out of the moneys arising from such sale shall, after paying the charges thereof and all the expenses attending the premises, pay over to the said Henry Erskine, his ex'ors, adm'rs, or assigns, the said sum of $34,297.00, with interest thereon from this day until this trust is fully discharged, and the further sum of $3,150.00, with interest thereon until this trust is fully discharged, and the balance, if any, shall pay over to the said parties of the first part as
24 would be of right due them or their heirs, ex'ors, or assigns. But if the whole of the said sum of money shall be fully

paid off and discharged to the said Henry Erskine, his ex'ors, adm'rs, or assigns, on or before the 3d day of November, 1842, when the same is made payable by this indenture, so that no default of payment of the said sum of money be made, then this indenture to be void, or else to remain in full force and virtue.

In witness whereof the said parties have hereunto set their hands & seals the day & year above written.

JAMES CALWELL. [L. S.]
POLLY CALWELL. [L. S.]
WM. B. CALWELL. [L. S.]
FRANCES BEDFORD. [L. S.]
ELIZABETH COPELAND. [L. S.]
HENRY ERSKINE. [L. S.]

All interlineations & alterations were made prior to the execution of the above deed.

GREENBRIER COUNTY, *To wit:*

We, James Frazer and Wm. Cary, justices of the — in the county afores'd, in the State of Virginia, do hereby certify that James Calwell, Wm. B. Calwell, Frances Bedford, & Elizabeth Copeland, parties to a certain deed bearing date on the 3d day of November, 1841, and hereunto annexed, personally appeared before us in our county aforesaid and acknowledged the same (it being the within deed from them to Erskine) to be their act and deed, and desired us to
25 certify the said acknowledgment to the clerk of the county court of Greenbrier, in order that the said deed may be recorded.

Given under our hands and seals this 4th day of November, 1841.

JAMES FRAZER. [L. S.]
WILLIAM CARY. [L. S.]

GREENBRIER COUNTY, *To wit:*

We, James Frazer & William Cary, justices of the peace in the county aforesaid, do hereby certify that Polly Calwell, the wife of James Calwell, parties to a certain deed bearing date on the 3d day of November, 1841 (it being the within deed to Henry Erskine), personally appeared before us in our county aforesaid, & being examined by us privily and apart from her husband & having the deed aforesaid fully explained to her, acknowledged the same to be her act & deed conveying all her right in said deed, and declared that she had willingly signed, sealed, & delivered the same, and that she wished not to retract it.

Given under our hands & seals this 4th day of November, 1841.

JAMES FRAZER. [L. S.]
WILLIAM CARY. [L. S.]

GREENBRIER COUNTY,
CLERK'S OFFICE, *November* 4, 1841.

26 This deed in trust was presented in the office with authenticated certificates endorsed thereon certifying as well the due

acknowledgement thereof by James Calwell, Wm. B. Calwell, Frances Bedford, & Elizabeth Copeland as of the relinquishment of dower therein by Polly Calwell, the wife of the said James Calwell, & also the due acknowledgement thereof by Henry Erskine, and the same is accordingly admitted to record at 30 minutes after 3 o'clock p. m.

Teste: JOHN MATHEWS, *C. G. C.*

A copy from the record.

Teste: M. L. SPOTTS, *Clk.*"

The deed of trust referred to in the foregoing bill as Exhibit No. 7 is in the words and figures following, to wit:

"Whereas at the time of the purchase of the White Sulphur Springs property by Allen T. Caperton & his associates, who now compose the corporation known as the White Sulphur Springs Company, from Wm. H. Macfarland, trustee appointed by deed to make sale of the same by Wm. B. Calwell & others, there existed upon said property certain liens by deeds of trusts, judgments, &c., and whereas an arrangement was entered into between the said Allen T. Caperton, acting in behalf of himself & his
27 associate purchasers of the White Sulphur Springs & certain lands and personal property of the said Wm. H. Macfarland, trustee as aforesaid, of the one part, & certain of the creditors of Jas. Calwell, dec'd, & Wm. B. Calwell & other heirs of the said Jas. Calwell, dec'd, holding liens as aforesaid, of the other part, which agreement contains recitals that are substantially as follows, viz: Whereas the purchase by the said Caperton & his associates aforesaid was on the condition that the creditors of the said Jas. Calwell, W. B. Calwell, & any other of the heirs of the said Jas. Calwell entitled to liens by trust deed or otherwise on the premises purchased, except the creditors by & under the deed of trust of the 3d day of March, in the year 1836, securing a debt of $100,000 in the aggregate to Messrs. Singleton, Tabb, Wilcox, Stuart, & others, which is continued in full force, wholly unaffec-ed by said agreement, should accept the bonds of the joint stock company, to be organized by the said Caperton & his associates under the act of March, 1854, entitled An act incorporating the White Sulphur Springs, in the county of Greenbrier, charged on said purch-ed premises by trust deed or deeds duly executed & recorded, securing to said creditors in the order or course of succession in which the premises may be now subjected to the payment of their
28 debts, respectively, the principal & interest of their respective debts—that is to say, the debt of each & every creditor is to be computed up to the 15th day of October next (1857), and a bond duly executed & delivered to the said creditors, respectively, for the aggregate of principal & interest, payable at the end of ten years or sooner, at the discretion of the obligors in said bonds, but the interest on such aggregate, at the rate of six per cent., shall be payable annually on the 15th day of October, and the trust deed to secure said bonds shall provide for the payment of said interest annually as well as the principal at the end of ten years, with author-

ity to the creditors, or any of them, to require a sale of the premises whenever the payment of the said interest or of said principal shall be in arrear, the said bonds to be accepted in lieu of the debts & claims of said creditors against the said James Calwell, Wm. B. Calwell, & any other heir of him, the said Jas. Calwell, who are to be discharged from the claims, demands, and suits of the said creditors, respectively, and the said creditors desiring to confirm the purchase, made as aforesaid by the said Caperton & his associates, agree to accept of said bonds for and in substitution of their respective debts and to discharge the said Jas. Calwell, Wm. B. Calwell, & other heirs aforesaid, it being understood that until such bonds & trust deed are duly
29 executed and delivered the said creditors shall be entitled to their liens by their trust deeds or otherwise, and to their action against the debtor parties or persons, & that the trust deed to be executed as aforesaid shall place the said creditors, respectively, on the same footing they now occupy in respect to the order in which they may or can resort to the premises in charging the same with their debts, and time was given to the said Caperton & his associates to execute & deliver the bonds & trust deed to be by the said joint stock company executed & delivered as aforesaid;

And whereas it was agreed by other creditors of the estate of said Jas. Calwell, dec'd, & of Wm. B. Calwell, who had no liens, by judgments or otherwise, upon the White Sulphur Springs property, by which they bound themselves to grant an indulgence of ten years from the 15th day of October, 1857, upon their said claims, respectively, provided the said company, then to be organized, upon the purchase of the White Sulphur Springs by A. T. Caperton & his associates, would execute to them their obligations, respectively, for the principal & interest of their several claims, computed to the 15th of October, 1857, payable in ten years thereafter, the interest to be paid annually, & that the said company shall secure the said obligation by deed of trust on the White Sulphur Springs, conditioned for their payment after the said company shall have dis-
30 charged the other encumbrances by their deed of trust to secure the creditors of the White Sulphur Springs having liens on the same, and they further bound themselves to discharge the said James Calwell's estate & Wm. B. Calwell from their liabilities when the said creditors should receive the obligations as aforesaid of said company;

And whereas the said Allen T. Caperton & his associates, after having purchased the White Sulphur Springs property as aforesaid, organized themselves into a joint stock company under the provisions of the said act of Assembly of the 1st of March, 1854, entitled An act incorporating the White Sulphur Springs, in the county of Greenbrier; and the said company, with a view of carrying into complete effect the stipulations & provisions of the contracts & agreements aforesaid, has executed bonds to the said several creditors therein mentioned, all bearing date on the 15th day of October, 1857, & providing for the interest thereon annually—a schedule of each class of bonds, those executed for debts heretofore operating as liens on the lands & property aforesaid, and those executed for debts not

heretofore operating as liens, is herewith made out & filed as part of this indenture, headed with "A list of bonds issued by the White Sulphur Springs Company for old debts due from the former proprietors and secured by a deed of trust executed on the 15th
31 day of October, 1857, by the White Sulphur Springs Company," and signed at the foot thereof by A. F. D. Gifford, president of the company.

Now, this indenture, made this 15th day of October, 1857, by the White Sulphur Springs Company, of the first part, Peachy R. Grattan, John Echols, & Robert F. Dennis, of the second part, and the creditors aforesaid, of the third part, witnesseth: That said White Sulphur Springs Company, for and in consideration of one thousand dollars in hand paid, the receipt whereof is hereby acknowledged, and with a view of carrying into effect the contracts & agreements aforesaid, hath, and by these presents doth give, grant, bargain, sell, and convey unto the said Grattan, Echols, & Dennis, their heirs & assigns, forever all that certain tract or parcel of land in Greenbrier county known as the White Sulphur Springs, containing, by estimation seven thousand acres, conveyed by John Bowyer Calwell & others to William H. Macfarland, in trust, to sell, &c., by deed bearing date on the 22d day of November, 1853, and of record in Greenbrier county, and conveyed by the said Macfarland to Jeremiah Morton & others by deed bearing date the 1st day of May, 1857, also of record in said county court, to which reference may be made for greater certainty, with all and singular the appurtenances thereunto belonging or
32 anywise appertaining; also all the personal property embraced in two schedules, which are to be taken, held, & recorded as parts of this deed; the one schedule is headed "List of personal property at the White Sulphur Springs, June the 10th, 1857;" the other headed "List of personal property in and about Mastin's or White Sulphur Springs Hotel, now on the premises, which is to be given up to the White Sulphur Springs Company, as having been the property of Wm. B. Calwell, acting for himself & others, members of his family, June 20th, 1857;" which articles of personal property are to be preserved, or a like number of kind to be supplied in their stead; and the said White Sulphur Springs Company covenant to warrant the title generally to the lands & appurtenances aforesaid. Nevertheless, this conveyance is made to the said Peachy R. Grattan, John Echols, & Robert F. Dennis upon this express trust & confidence: That they hold the said lands and property subject to the use of the said White Sulphur Springs Company until default be made either in the payment of the interest annually upon said bonds or in the payment of the debts, with any interest which may have accrued thereon, at the end of the said ten years from the 15th of October, 1857; and in the event that the annual interest aforesaid shall be due and unpaid upon the said bonds or any of them for any one year or more the said Grattan, Echols, & Dennis, or
33 a majority of them, or the survivor or survivors of them, shall, upon the application of the holders of any one of the bonds aforesaid on which interest remains so due & unpaid, proceed to sell at public auction for ready money so much of the said property, either

real or personal, as they may deem best, as will pay the interest on all the said bonds which may remain due up to the 15th October next preceding the said sale and the costs of making the sale, & shall pay the same over to the parties respectively entitled to the same; but before any sale shall be made for interest as aforesaid the said trustees shall advertise the time & place of making the same in a newspaper published in the town of Lewisburg, one published in the city of Richmond, & one published in the city of Washington for eight weeks before the sale, and in the event that default be made in the payment of the said debts & any interest which may have accrued on the bonds aforesaid at the end of the said ten years, then the said trustees or a majority of them or the survivors or survivor of them shall, upon the application of any of said creditors, proceed to sell the said real & personal property and appurtenances for cash to the highest bidder, after advertising the time & place (the premises) of sale for eight weeks in a newspaper published in the city of Richmond & one published in
34 the city of Washington & one published in the town of Lewisburg, & out of the proceeds of such sale shall first pay the costs and commissions attending the sale, then the debts now secured by liens, according to their respective priorities, as they now exist, upon the lands & property, and then pay off the bonds aforesaid for which heretofore no liens have existed in ratable proportion, and the residue, if any, they shall pay over to the said White Sulphur Springs Company.

And whereas there are certain trust & judgment creditors of the said James and Wm. B. Calwell, who, by virtue of such trusts & judgments, have liens upon the lands, &c., hereinbefore conveyed to the said Grattan, Echols, & Dennis, who may hereafter desire to receive the bonds of the White Sulphur Springs Company on the same terms that the other lien creditors have received them, in that event liberty is reserved to the said company to issue the same, if it sees proper so to do, within one year from the date of these presents, and shall add a list thereof, with the date and amount, to the bottom of the list hereinbefore referred to, and thereupon the said bond creditors last aforesaid shall stand on the same footing with the other creditors who have taken bonds of the company for debts which operated as liens upon the said property.

35 In testimony whereof the said White Sulphur Springs Company have, by their president, A. F. D. Gifford, signed this deed & affixed to it the seal of the company the day & year hereinbefore written.

[L. S.]

A. F. D. GIFFORD,
Pres'd't W. S. S. Co.

Schedules.

"A list of bonds issued by the White Sulphur Springs Company for old debts due from the former proprietors and secured by a deed of trust executed on the 15th day of October, 1857, by the White Sulphur Springs Company."

To whom or for whose benefit the following bonds are executed—	Date of bond.	Debts heretofore operating as liens on land & property.
	1857.	
To Sam'l Price, Mason Mathews & Thos. Mathews, ex'ors of Henry Erskine, dec'd	Oct. 15	$21,848 69
To ditto ditto ditto	"	21,848 69
" ditto ditto ditto	"	21,848 61
" Samuel C. Beard, adm'r *de bonis non* of C. Beard, dec'd	"	907 67
" Thomas M. Smith	"	5,327 92
" Joseph Allen	"	1,333 87
" Allen T. Caperton, ass'r W. Soleo	"	2,000 00
" ditto do.	"	2,000 00
" ditto do.	"	2,000 00
" ditto do.	"	2,000 00
" ditto do.	"	2,000 00
" ditto do.	"	1,174 95
" John J. Moorman, ass'r H. W. & J. J. Fry	"	2,000 00
ditto do.	"	2,000 00
36		
To John J. Moorman, ass'r H. W. & J. J. Fry	"	2,000 00
ditto do.	"	2,000 00
ditto do.	"	1,883 85
" P. Cullen, ass'r of W. Boothe	"	1,195 44
" David Tuckwiller	"	5,579 14
" Chas. McClung & G. A. Rader, adm'rs	"	7,997 73
" Edward H. Farnesworth	"	400 79
" Paul McNeal	"	1,494 56
" James M. Nickell	"	471 29
" Randolph Stalnaker	"	1,180 90
" Person- rep's of Wm. Paxton	"	1,963 50
" Thos. Mathews, surviving partner	"	2,468 67
Am't carried to next page		$116,926 35
" James Evans	"	1,007 10
" Alexander Duvall	"	1,375 58
" Oliver F. Winchester	"	128 76
" Rich'd Crouch, trustee	"	1,027 62
" Robert Dickson	"	2,230 20
" Wm. H. Macfarland, trustee for debt of Henry Mann	"	1,000 00
" Same	"	1,000 00
" Same	"	1,000 00
" Same	"	1,000 00
" Same	"	1,000 00
" Same	"	1,000 00
" Same	"	1,000 00
" Same	"	1,000 00
" Same	"	1,000 00
" Same	"	1,000 00

Schedules.—Continued.

To whom or for whose benefit the following bonds are executed—	Date of bond.	Debts heretofore operating as liens on land & property.
	1857.	
To Same	Oct. 15	765 34
" Personal rep's of Jas. Dorsey, 4 bonds of $1,000 each	"	4,000 00
Same	"	705 87
37		
To Stuart McClung	"	2,008 74
" Jas. M. Nickell, adm'r of Isaac	"	981 21
" Willis Mann	"	2,185 33
" J. H. Boswell	"	2,784 90
" H. H. Watson, 2 bonds, 2,500 ea.	"	5,000 00
" do. 3 " ea., 2,000	"	6,000 00
" do. 1 " for	"	976 63
" Jacob Heald & Co.	"	1,850 39
" Mrs. Margaret P. Callison, Ex'r'x	"	2,384 57
" Jas. A. Frazer, ex'or of Jas. Frazer	"	1,232 08
" James Long	"	1,644 00
" John Surbough	"	925 82
" Durby & Farnham	"	479 86
Page 3		$49,694 00
" Wm. H. Macfarland, trustee of debt of Wm. McCreary	"	805 00
	"	1,000 00
" Floyd Estill, ass'ee of D. Surber	"	325 11
" Fav'r of John Cauley	"	319 87
" Ro. P. White, ex'or of Wm. White	"	1,002 37
" Leven M. Powell	"	4,499 87
" Jacob Eakle	"	1,140 50
The preceding list, except the debts to H'y Erskine's ex'or's, is taken from the trust deed of 10th Oct., 1842, & have not been sued on.		
To fav'r of William A. Harper, ex'or of John Harper, dec'd, 4 bonds of 1,000 ea.	"	4,000 00
" 1 ditto	"	742 17
" fav'r of Steele & McDaniel	"	626 02
Same	"	192 40
" Sam'l Hamilton & J. M. Nickell, adm'rs	"	11,865 40
" " ½ debt, H. & N.	"	2,529 65
" Jas. M. Nickell, "	"	2,529 65
38		
To Jas. Jarrett, Sr., bal. judg't	"	2,078 15
" personal rep's of Jno. A. North, dec'd	"	1,000 00
" his int. in Jarrett's judg't	"	1,000 00
	"	1,000 00
	"	755 73
" Jas. M. Nickell, adm'r of Isaac	"	164 27
" fav'r of Thos. Nickell & Sam'l Hamilton, ex'ors of And'w Nickell, dec'd	"	1,763 47

Schedules.—Continued.

To whom or for whose benefit the following bonds are executed.	Date of bond.	Debts heretofore operating as liens on land & property.
	1858.	
To Lewis M. Calwell, for Snead's debt	Oct. 15	789 40
Do. do.	"	789 40
" Wm. H. Macfarland, for F. Bk. Va., debt of 7 bonds, ea. 1,000	"	7,000 00
Do. in 1 bond		796 98
" Wm. F. Butler, p'r Smith & Butler	"	2,241 63
Personal rep's of Jno. A. North, dec'd, debt of George White	"	524 30
Page 4		$51,481 34
Fav'r of Eliz'th Stuart's ex'ors	"	60 57
" John Surbough (p'r Arm's debt)	"	140 77
" Wm. H. Macfarland (Shields & S, debt)— 3 bonds of 1,000 ea.	"	3,000 00
1 "	"	332 27
" John McCarty	"	696 51
" John M. Alderson	"	1,048 70
Joel McPherson, 4 bonds of 1,000 ea.	"	4,000 00
1 "	"	648 20
Same, debt D. T. Watson, 3 bond-, 1,000 ea.	"	3,000 00
Same, " 1 "	"	802 33
Same, " 2 "	"	2,000 00
Same, " 1 "	"	744 69
39		
" Wm. H. Macfarland, for John G., 3 bonds of $1,000 ea.	"	3,000 00
1 do.	"	740 65
" personal reps. of Hugh Wilson	"	1,446 06
" John Surbough	"	1,082 31
" A. T. Caperton, ex'or of H. Caperton, for Dickson's debt	"	853 21
" A. T. Caperton & ex'ors of Ro. Campbell	"	346 85
" Wm. H. Macfarland, ass'ee of J. A. Rowan	"	309 89
" Smith, Durkee & Morris	"	132 99
" Smith & Palmer	"	383 02
" Sam'l Price, for F. Roberts' debt	"	105 30
" Jno. M. Dunbar, ass'ee	"	88 93
" W. H. Macfarland, trustee	"	77 36
" Wm. Skeen, adm'r of Morrison	"	550 87
" Jesse Bright, ass'ee	"	115 12
" A. T. Caperton, ex'or of H. Caperton	"	249 40
" Joel McPherson, ass'ee Jas. Frazer	"	1,065 94
Same (Roberts' debt)	"	989 97
		$28,011 19

Schedules.—Continued.

To whom or for whose benefit the following bonds are executed—	Date of bond.	Debts heretofore operating as liens on land & property.
List Continued.		
	1857.	
To George White	Oct. 15	590 71
" Joel McPherson, for his portion p'd bank debt	"	1,227 16
" Wm. H. Macfarland, trustee	"	435 49
" Sam'l McClung, Gibbs' debt	"	207 08
" H'y W. Bowyer, ass'ee Goodwin & Co.	"	704 68
" A. A. & M. Chapman, ex'ors	"	482 91
" James K. Hall	"	569 41
" personal reps. of J. A. North	"	1,051 65
" O. P. H. Stern	"	450 71
" W. H. Macfarland, trustee (W. Carper)	"	815 76
" Gay, Mathews & Co., late merchants	"	2,063 24
" A. T. Caperton, ex'or (Easley, for Co. Crump)	"	339 06
" personal reps. of Wm. Paxton	"	702 43
" Sam'l Hamilton & Jas. M. Nickell, ex'ors	"	1,194 89
" John Snyder	"	168 05
		$11,003 24

40 The foregoing embraces, as far as ascertained, the debts heretofore operating as liens, whether by trust deeds or judgments, against Jas. Calwell, dec'd, & Wm. B. Calwell, or against either of them.

A list of bonds issued by the White Sulphur Springs Company for debts owing by the former proprietors, but which have not heretofore operated as liens, being neither in the form of judgments or trust deeds.

Am't of debts bro't of lien list.

Bond to Addison Frazer	1857, Oct. 15.		542 45
" Floyd Estill	"		1,363 39
" to Sam'l Hamilton & J. M. Nickell, ex'ors	"		357 10
" James M. Nickell	"		3,569 55
" same (Thos. Nickell's debt)	"		53 42
" same	"		1,369 46
" Alex. Jackson	"		130 55
" Burdett & Crawford	"		76 10
" same & same	"		27 84
" George Johnston	"		204 25
" Sam'l Hamilton	"		95 61
" Rob't H. White	"		562 98
" Wm. Nelson	"		73 98

"	Richard Dickson	"	497 27
"	Beirne & Nesmith	"	311 05
"	P. Beirne	"	205 10
"	Thos. A. Bell	"	734 77
"	Edwin Mathews, 3 bonds, 1,000 ea.	"	3,000 00
	Bond, same, 1 bond	"	853 12
41	" Wm. H. Ferrill, 6 bonds, at 1,000 ea.	"	6,000 00
Bond,	Wm. H. Ferrill, 1 bond	"	678 75
"	P. A. Prindle, 12 bonds, at 1,000 ea.	"	12,000 00
"	same, 1 bond	"	843 75
"	Hugh A. Watt, 2 bonds	"	2,055 00
"	Davidson	"	398 05
"	E. T. Cannon, adm'r of S. Bonwinter	"	667 88
"	S. C. Ludington	"	319 55
"	Addie & Gray	"	1,130 52
			$38,121 39

See next page for list of property.

List of personal property at the White Sulphur Springs, June 10, 1857.

906 matresses, 457 bedsteads, 1,055 pillows, 471 blankets, 673 pillow-cases, 118 counterpanes, 1,090 towels, 174 col'd spreads, 1,011 sheets, 177 curtains, 299 comforts, 463 tables, 544 tumblers, 264 pitchers, 603 wash bowls, 302 looking-glasses, 303 candlesticks, 371 chambers, 17 washstands, 1,496 chairs, 2 pianos, 13 sofas, 30 chairs, 5 tables, 202 table-cloths, 90 table-spoons, 50 tea do., 100 salt-spoons, 182 forks, 30 sugar tongs, 116 large case knives, 96 small do., 51 castors, 13 double-plated do., 91 pitchers, 139 cream pots, 130 sugar dishes, 2,088 large plates, 1,068 small do., 412 deep ditto, 264 butter do., 204 salt cellars, 35 mustard cans.

Lot of paintings, ornamental furniture in parlor of reception house.

A true copy of the list taken at the time.
Sept. 15, 1857.

R. E. HUGHSON, *Secr.*

42 List of personal property in and about Mastin's or White Sulphur Hotel now on the premises and which is to be given up to the White Sulphur Springs Company as having been the property of Wm. B. Calwell, acting for himself & others, members of his family, June 20th, 1857.

22 double bedsteads, 52 single do., 53 tables, 158 chairs, 1 washstand, 1 carpet, 3 sofas, 59 wash bowls, 47 pitchers, 37 chambers, 44 looking-glasses, 21 tumblers, 13 feather beds, 132 matresses, 54 blankets, 106 sheets, 68 counterpanes, 91 pillows, 101 pillow-cases, 48 boulsters, 16 dishes, 31 vegetable do., 12 p'r shovel & tongs, 5 flat

irons, 13 hand irons, 10 fenders, 50 candlesticks, 2 stoves (not p'd for, due to Skeen & Hurt), 15 bed valan-, 28 table-cloths, 59 curtains, 25 comforts, 14 p'r snuffers, 31 towels, 1 carpet, 1 safe & one knife box, 1 cooking stove and fixtures, 3 kettles, 2 ovens & 4 pots, 10 decanters, 13 tumblers, 2 demijohns, 1 desk, 2 lant*h*erns, 16 buckets, 19 salt stands, 71 plated table-spoons, 70 do. tea-spoons, 16 salt do., 17 sugar dishes, 13 cream pitchers, 43 cups & 78 saucers, 57 plates, 11 bake pans, 11 dishes, 52 plated forks, 7 de-sert-spoons, 8 p'r sugar tongs, 59 knives & 63 forks, 4 dining tables, 3 side do., 2 tea urns, 1 coffee do., one soup do., 3 egg boilers, 2 pickle dishes, 7 preserve do., 93 plates, 15 side dishes, 1 chaff*i*n-dish, 9 pitchers, 3 molasses cans, 3 waiters, 4 axes, 1 lot soap, 2 hogs, 1 plough, one wheelbarrow, 1 fork, 43 & 44 one shovel, 2 cows, 2 calves, 1 waggon, $24 due to Isaac Siers, 1 plough, 6.25 due to C. Hempenstall, 3 hogs to pay, 3 clocks, 1 piano, 1 centre table, 1 large looking-glass, 2 rocking chairs, 8 common do., platform scales, 1 carpet & 1 rug, 1 p'r andirons, 1 fender, 4 curtains, 1 lamp, 1 lot tins, &c., in spring-house.

A true copy from the list taken at the time.
Sept. 17, 1857.

R. E. HUGHSON, *Secr.*

CLERK'S OFFICE OF GREENBRIER
COUNTY COURT, *October* 16, 1857.

This deed, with the schedules referred to therein, was presented in the office, and the execution thereof being duly acknowledged by A. F. D. Gifford, pres't Wh. S. S. Co., is admitted to record.

Teste: JOEL McPHERSON, *Clk.*

A copy.

Teste: M. L. SPOTTS, *Clk.*"

45 And at another day, to wit, at a district court of the United States for the district of West Virginia, held at Charleston, on Thursday, the 23d day of April, 1868:

This cause came on this day to be heard on the bill and exhibits, the said bill taken for confessed, and set for hearing at the rules as to the defendants, The White Sulphur Springs Company, Allen T. Caperton, Samuel Price, Thomas Mathews, Mason Mathews, & Joel McPherson, and was argued by counsel.

Upon consideration of all of which it is adjudged, ordered, and decreed that this cause be referred to Henry M. Matthews to take, state, and report the following accounts:

1st. All the liens that exist upon the real estate mentioned and described in the bill as belonging to the defendants, The White Sulphur Springs Company, whether the same were created by mortgage, deed of trust, judgment, or otherwise.

2nd. The amount of said several liens and their respective priorities.

3rd. Such other and further matter as any party to this suit may require or the commissioner may deem pertinent.

And it appearing from the papers in this cause that the White Sulphur Springs Company had leased the real and personal estate mentioned and described in the bill to George L. and William H. Peyton for a series of years, and that they had provided in
46 the contract for the payment of the taxes that should be assessed upon the property and a large annual rent, which by the lease is provided to be paid over to the oldest lien holders in extinguishment of the interest that shall accrue thereon, and the said lease having been made prior to the institution of this suit and the application of the rents, as provided for in the lease, being for the benefit of all the lien holders:

The court is of opinion not to disturb said lease, but to allow the same to exist and remain until the coming in of the report hereby directed, but the court is of opinion that it would be inexpedient to allow said rents, as provided for in the said lease, to go into the hands of or be distributed by any person or parties residing outside of this judicial district, but that the same should remain within the control of the court.

It is therefore adjudged, ordered, and decreed that Henry M. Matthews, who is hereby appointed a special commissioner for that purpose, do, in the room and stead of R. H. Maury, collect from the said George L. Peyton and Wm. H. Peyton any sums which may now be due or which may hereafter fall due to the White Sulphur Springs Company on account of rents of said real estate, and that he apply the sums coming into his hands as such commis-
47 sioner in the same manner and to the same persons and to the same purposes as the said Maury was directed to apply said money by the terms of the lease from the White Sulphur Springs Company to said Peyton, but before the said Matthews shall make the collections aforesaid he shall give bond, with approved security, before the clerk of this court, conditioned for the faithful discharge of his duties of his said office of commissioner in the penalty of $25,000, and that said Matthews report his proceedings to this court.

And the said Matthews is hereby directed to give notice of the time and place of the taking of the account in this decree directed by publication of said notice once a week for four successive weeks in some newspaper published in Lewisburg and Richmond, Virginia, and such publication shall be deemed equivalent to personal service of such notice on the parties to this suit.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Monday, the 23d day of November, 1868:

For reasons appearing to the court it is ordered that this cause be continued until the next term.

48 And at another day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Tuesday, the 30th day of November, 1869:

The petition of James M. Nickell, in his own right, as adm'r of

James Nickell, dec'd, and as adm'r of Isaac Nickell, dec'd, and of Nathaniel Harrison and Fleming Morgan, by their counsel, asking to be made party defendants to the plaintiff's bill, with leave to answer the same, together with the exhibits filed with said petition, was this day presented in court, and thereupon appeared William A. Quarrier, Esqr., attorney for the plaintiffs, and resisted the prayer of said petition, so far as said James M. Nickell and Fleming Morgan are concerned, upon the ground that the petitioner, James M. Nickell, by a power of attorney dated 13th of October, 1869, to H. M. Matthews, which is ordered to be made part of the proceedings in this cause, had authorized the said Matthews to control the collection of said Nickell's claims against the White Sulphur Springs Company, and that said Harrison therefore had no longer any authority to act for said Nickell in the premises, and also upon the ground that the said Nickell was already a party to this suit, and, so far as said Fleming Morgan is concerned, upon the ground that the claim set up as to him in said petition is a claim for unliquidated damages, which cannot be asserted
49 in this suit until a judgment at law therefor against the White Sulphur Springs Co., in consideration whereof, and without intending at this time to decide any of the questions presented by the said petition and the opposition made to the prayer thereof, except so far as to determine that the said questions are proper for the consideration of the court in this cause. It is therefore adjudged, ordered, and decreed that the said petition and exhibits filed therewith, also the power of attorney from said James M. Nickell to H. M. Matthews, be received and filed and made part of the proceedings in this cause; and the court doth further order that the said Nathaniel Harrison and Fleming Morgan be made party defendants to this bill with leave to answer the same within ninety days from the date of this decree. The court reserves the right to itself at any time hereafter, if it should see cause, to strike out the name of said Fleming Morgan as a defendant to this suit. It being suggested to the court that said James M. Nickell is already a sufficient party defendant to this suit, the court doth not at this time make any order as to him making him a party as prayed for in the petition, but doth leave this matter open for its future and further consideration, if necessary.

It is further ordered that the clerk of this court take charge of all the exhibits filed with said petition instead of filing them
50 amongst the papers in this cause, and keep them safely and securely, subject, however, to the inspection and examination of counsel on either side at any time.

And at another day, to wit, at chambers at Walker's Hotel, in the town of Clarksburg, West Virginia, on the 25th March, 1870:

In pursuance of notice given by James M. Nickell, in his own right, as administrator of James Nickell, deceased, and as administrator of Isaac Nickell, deceased, Fleming Morgan and Nathaniel Harrison, to the other parties in interest, they moved the judge of the said court, in vacation, to appoint a receiver of the White Sulphur

Springs property, situated in the county of Greenbrier, in said State, and to rent out the same at public outcry to the highest bidder for such time or term as to the said judge may seem proper; Gideon D. Camden appearing as attorney for the parties making the motion, and Frank Hereford for the said White Sulphur Springs Company, William H. Peyton, George L. Peyton, and William T. Sutherlan; and by their consent the said motion was adjourned to the court-house of Harrison county, to be heard on the present day, and thereupon the said Hereford, on the part of the parties he appeared for, moved the said judge to postpone the said motion to enable them to take the testimony of an important
51 witness whose evidence they were unable to procure by reason of his absence, and the answer of the said N. Harrison not having been sent here in pursuance of an order made by the judge in vacation, on consideration whereof, it is adjudged and ordered that the motion of said James M. Nickell & others to appoint a receiver, &c., be postponed and adjourned to the third day of the next term of the district court of the United States for the district of West Virginia, holden at Charleston, to be then and there heard and disposed of by the said court.

(Signed) JOHN J. JACKSON, JR.,
Judge, &c.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held at Charleston, on Thursday, the 21st day of April, 1870:

The motion made by the defendants, James M. Nichols, &c., to the judge of this court in vacation on the 25th March last, and adjourned to the 3rd day of the present term of the court here, is, on motion of the parties making said motion, now docketed in court and continued until to-morrow.

52 And at another day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Thursday, the 28th day of April, 1870:

The motion made before the judge of this court in vacation, and adjourned over to this court, to appoint a receiver and rent out the White Sulphur Springs property being fully argued by the attorneys of the several parties, on consideration whereof, it is ordered that the said motion be continued until the next term, and, on motion of the complainants, they have leave to sue out process against the defendants, Wm. H. Peyton, George L. Peyton, and Wm. T. Sutherlin, to require them to answer the bill filed in this cause, and this cause, as to said defendants, is remanded to rules.

And on the same day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Thursday, the 28th day of April, 1870:

The court, without at this time further considering the report of Commissioner H. M. Matthews, showing the liens of the several creditors in this case, doth recommit the same to said commissioner,

with instructions, after giving four weeks' notice of the time
53 and place of taking said account for four weeks successively in some newspaper published in the county of Greenbrier, to ascertain and report to the court at its next term—

1st. Whether any and how much, if any, of the real estate of Frances Bedford, deceased, near the White Sulphur Springs, in Greenbrier county, is liable for the payment of any of the trust debts in the bill and proceedings mentioned, and to which and to what extent the same is so liable.

2nd. Whether at any time and at what time, during the late war, any portion of the personal property embraced in the said trust deeds or any of them was sold by the White Sulphur Springs Company for Confederate money, and by whom and by what authority and for what amount it was so sold and what application was made of such Confederate proceeds and what is the present value of such proceeds in good money in the ratio of such money to Confederate money as of the time of such sale or sales, and also what portion, if any, of the personal fund embraced in the said deeds or any of them is still unsold.

3rd. That he ascertain and report the various debts, other than the trust debts, which are due from the White Sulphur Springs Company to outstanding creditors, together with any other matter specially stated deemed pertinent by himself or required by any party to be so stated.

54 In taking the said account the commissioner is authorized, if he deems it necessary, to employ a surveyor; and thereupon Special Commissioner H. M. Matthews filed his report, showing what funds had been collected by him from George L. and William H. Peyton on account of the rents of the lands in the bills mentioned, together with his disbursements of the same and the vouchers sustaining said disbursements, all of which being seen and examined by the court it is adjudged, ordered, and decreed that the said report be approved and confirmed and the said commissioner be directed to pay, out of the first instalment of the rents of the said White Sulphur Springs property for the current year, the taxed costs of this suit.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Tuesday, the 10th day of January, 1871:

The defendant, Nathaniel Harrison, this day filed the affidavit of Noyes Rand in the words and figures following, to wit: Gay & wife, &c., by which it appears that the defendant, James M. Nickell, since the institution of this suit and since the matters set forth in his bill against the said defendant, Nathaniel Harrison, a copy of which is here filed in these words, &c.: To the Hon. Joseph M. McWhorter,
55 &c., were taken jurisdiction of by this court by the bills, petitions, answers, and papers of this cause, has filed his said bill in the circuit court of Monroe county, in this State, and is moving the said court to take and exercise jurisdiction of the matters and things set forth in the said bill in contempt of the jurisdic-

tion and authority of this court. On motion of the said Nathaniel Harrision, by his attorney, it is ordered that the said defendant, James M. Nickell, show cause, if any he can, why he shall not be fined and imprisoned for his said contempt to this court in filing and prosecuting said bill in said court as aforesaid, and why he shall not be prohibited from further proceedings in the said circuit court on his said bill and matters therein set forth, and that he be served with a copy hereof.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Saturday, the 22nd day of April, 1871:

This day James M. Nickell filed his answer to the rule entered against him in this cause at the last term, together with affidavit of Mess. Sam'l Price & A. T. Caperton in relation thereto, and said rule is continued.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Friday,
56 the 22nd day of September, 1871:

Henry M. Matthews, special commissioner in this suit, having submitted his report of the receipts and disbursements of the rent of the White Sulphur Springs property for the year commencing April 1st, 1870, and ending April 1st, 1871, and the same, together with accompanying vouchers, having been examined, the said report is hereby approved and confirmed.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Saturday, the 23d day of September, 1871:

This day the defendant, Joel McPherson, tendered his answer, which is ordered to be filed, and to which the plaintiffs reply generally.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Wednesday, the 24th day of April, 1872:

This cause came on again to be heard on this 24th day of April, 1872, upon the papers heretofore read therein and upon the answer of Joel McPherson, and the exhibits filed therewith at the September term, 1871, of this court, and upon the general replication to said answer, and was argued by counsel; upon consideration
57 whereof, the court not now deciding any of the other questions involved in the case, except the claim asserted by the defendant, Joel McPherson, to a part of the land and premises involved in this litigation, is of opinion and doth decide that the said Joel McPherson has shown himself to be invested, by good and valid title, with the separate and individual interests formerly held and owned by Mrs. Frances Bedford and her husband, William Bedford; Elizabeth Copeland and her husband, John Copeland, in the tract of 950 acres, the original White Sulphur Springs tract,

except in the tract of 200 acres laid off by the heirs of Michael Bowyer as a common and joint property.

The court is also of opinion and doth decide that by the several contracts and agreements entered into between the White Sulphur Springs Company and the said Frances Bedford and Elizabeth Copeland and William B. Calwell (who were then the owners of the entire property, which several contracts are filed as exhibits in this case), it was agreed that the said White Sulphur Springs Company should assume and pay all the debts and liabilities upon said property, and that said contracts were accepted and agreed to by the creditors of said property. The court is further of opinion and doth decide that under the terms and by the provisions of said contracts the separate and individual interests of the said Frances Bedford and Elizabeth Copeland (except in the 200 acres common property)
58 were released and discharged from all the liens and liabilities of the creditors, except from the lien which was created by the deed of trust of the 3d of March, 1836, made to secure a debt to Richard Singleton and others, which lien was expressly retained as it was originally given. The court is also of opinion and doth decide that the said deed of trust of the 3d of March, 1836, is the first subsisting lien on the 200 acres common property, and is entitled to priority of payment out of the proceeds of any sale thereof, and that resort should not be had to enforce the lien of said deed of trust on any of the other separate interests in the 950-acre tract until the proceeds of the said 200 acres common property shall be exhausted.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Tuesday the 21st day of January, A. D. 1873:

This cause coming on the 21st day of January, 1873, to be again heard upon the papers formerly read and upon the petition of John L. Manning, surviving partner of himself and Richard Singleton, heretofore filed on the — day of ——, 1872, by leave of court was argued by counsel, and it appearing from said petition, and all the parties consenting thereto, that the said John L. Manning, as
59 surviving partner of himself and Richard Singleton, is the legal owner of one of the $5,000 bonds, made by Wm. B. Calwell, agent for the proprietors of the White Sulphur Springs property, and secured by deed of trust made by James Calwell and wife, Frances Bedford, and Eliza Copeland, dated March 3d, 1836, and recorded in the clerk's office of the county court of Greenbrier county, West Virginia; and it appearing, also, that the said bond has been lost or destroyed, the court is of opinion and doth decide that the said John L. Manning, as surviving partner of himself and Richard Singleton, is the legal owner of said bond and is entitled to receive from the White Sulphur Springs Company the amount of said bond, with all the interest due thereon, according to the terms and provisions of the said deed of trust of March 3, 1836, made and executed by James Calwell and wife, Eliza Copeland, and Frances Bedford to Andrew Stephenson, F. B. Miller, James McFarland, and

John Thompson Brown, conveying the White Sulphur Springs property to secure the payment of twenty bonds of $5,000 each, of which the one owned by John L. Manning, as surviving partner, &c., is one. The court doth adjudge, order, and decree that Henry M. Matthews, as receiver in this cause, do pay to John L. Manning, as surviving partner of himself and Richard Singleton, or to his attorney, Benjamin H. Nash, out of any money that may hereafter
60 come into his hands, subject to the order of this court in this cause, arising from the lease of the White Sulphur Springs property, ratably with the holders of the residue of the said twenty bonds of $5,000, the accruing interest thereon at the rate of six per centum per annum.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held, as aforesaid, on Thursday, the 24th day of April, 1873:

This cause came on again to be heard on this 24th day of April, 1873, on the papers formerly read, and was argued by counsel. On consideration whereof, and it being admitted by Henry M. Matthews, the receiver in this cause, that there is as much as twelve hundred dollars in his hands, as receiver in this suit, subject to the order of the court and applicable to the payment of the interest on the first mortgage debt on the property of the White Sulphur Springs Company; and it appearing that all the creditors named in the deed of trust of the 3d March, 1836, have received for 4 years' interest on their debts to the 1st August, 1872, except Jno. L. Manning, surviving partner of himself and Rich'd Singleton, and that the said Manning has received no interest during the said four years on his debt of five thousand dollars due him and
61 secured by the said deed of trust of the 3d March, 1836, and executed by James Calwell & wife, —— Bedford, and Eliza Copeland, and of record in the clerk's office of the county of Greenbrier, of West Virginia, the court doth adjudge, order, and decree that the said Henry M. Matthews, as receiver in this cause, do pay to John L. Manning, as surviving partner of himself and Richard Singleton, or to Benjamin H. Nash, his attorney, the sum of twelve hundred dollars, that being his interest for four years on his debt of five thousand dollars, secured as hereinbefore mentioned.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Monday, the 22nd day of December, 1873:

Henry M. Matthews, the commissioner appointed to collect and disburse the rents due from Wm. H. & Geo. L. Peyton, the lessees of the White Sulphur Springs, having filed his report showing said collections and disbursements for the past three years, and the said report having been examined and approved by the court, there being no exceptions thereto, it is ordered to be, and the same is hereby, confirmed in all respects.

And it appearing to the court that the said lease of the White Sul. Springs to the Mess. Peytons will expire on the 1st day

62 of April, 1874, and that this cause is not sufficiently matured to order a sale of said White Sul. — property, it is therefore further adjudged, ordered, and decreed that Henry M. Matthews, as commissioner of this court, be, and he is hereby, directed to lease said property for the Springs' season of 1874 for a sum not less than the annual rent reserved in the said lease to Wm. H. & Geo. L. Peyton, and the said commissioner shall collect and apply the said rents in the same manner and for the benefit of the same persons and to the same purposes as required by the said lease, and he shall reserve to the president of the White Sul. Sp'gs Co. in any contract he may make as aforesaid the same powers over the lessees as reserved in the lease to the present lessees.

And at another day, to wit, at chambers, at ——, in the town of ——, West Virginia, the — day of ——, 1874:

Upon motion of the plaintiffs it is ordered that the report made in this cause by Com'r H. M. Matthews under the decree entered therein on the 25th day of April, 1868, be recommitted to said commissioner with instructions to retake, state, and report an account of all the liens that exist upon the real estate mentioned and de-
63 scribed in the bill as belonging to the White Sulphur Springs Company, showing distinctly their amounts, dates, dignities, and priorities, and in stating said account the said com'r is directed to classify the liens and to set forth clearly all the debts in each class, their respective amounts, and, as far as can be ascertained, the present owner of each and the number of the coupon bond secured by deed of Octo. 15, 1857, by which it is now evidenced; and the said com'r is further directed to report any other matters deemed material by himself or which any party to this suit may require; but before taking said accounts the said commissioner shall give notice of the time and place of taking the same by an advertisement for four consecutive weeks in some newspaper published in the town of Lewisburg, which shall be equivalent to personal notice to all the parties interested.

(Endorsed:) "Enter: J. J. Jackson, Jr. Teste: Jasper Y. Moore, clerk."

Entered March 11th, 1874.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held at Charleston, on Wednesday, the 6th day of May, 1874:

This cause came on this day to be heard again upon the papers formerly read and the report of Henry M. Matthews, commissioner, &c., of the renting of the said White Sulphur Springs prop-
64 erty for the Springs' season of 1874, to which report there are no exceptions. Upon consideration thereof it is adjudged, ordered, and decreed that the said report and the contract with Geo. L. Peyton & Co. therein referred to be confirmed.

And at another day, to wit, at a district court of the United States

for the district of West Virginia, held as aforesaid, on Thursday, the 7th day of May, 1874:

It being suggested to the court that since the institution of this suit C. S. Gay, one of the plaintiffs, and Mary P. Callison, Paul McNeil, James Jarrett, Sam'l McClung, John N. Copeland, and Elizabeth Copeland, defendants, have departed this life, it is ordered that the said suit abate as to the said plaintiff, C. S. Gay, and that the same by consent be revived against James Knight, adm'r of Mary P. Callison; George McNeil and Rachel McNeil, personal representatives of Paul McNeil; Alex-der F. Matthews and Joseph Jarrett, adm'r of James Jarrett; Henry M. Matthews, and S. K. McClung, adm'rs of Samuel McClung; Joel McPherson, executor of John N. Copeland and adm'r of Elizabeth Copeland; and it being also suggested that Rob't Dickson, one of the defendants, has become insane, and his estate has been committed to H. F. Dickson and Ro. R. Dickson, committee, it is by like consent ordered that said suit be revived against said committee,
65 and Wm. B. Caldwell, Patrick Cullen, Ella Caldwell, Lewis M. Caldwell, Alexander F. Matthews, and Ella Caldwell, trustee of Columbia Calwell, this day filed their petition asking to *to* made parties defendant in this suit, which is accordingly done, and upon their motion the said petition is accepted and received as their joint answer; to which the plaintiff replied generally; and Henry M. Matthews this day filed his petition, from which it appears that the defendant, F. B. Miller, trustee, &c., has been removed and the said Matthews substituted as trustee in his stead. It is ordered that this suit be dismissed as to the said Miller, that the said Henry M. Matthews, trustee, &c., be made a party defendant, and that his said petition be received and filed as his answer; to which the plaintiff replied generally; and thereupon this cause continued until the next term.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Friday, the 8th day of May, 1874:

Commissioner H. M. Matthews is directed, out of the money coming into his hands, to pay the taxed costs of this suit before making his regular distribution of the rent money.

66 And at another day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Tuesday, the 29th day of September, 1874:

This day Henry M. Matthews tendered his petition in this cause, which is ordered to be filed.

And on the same day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Tuesday, the 29th day of September, 1874:

Henry M. Matthews, special commissioner in this cause, this day tendered his supplemental report of liens, priorities, &c., which is ordered to be filed.

And at another day, to wit, at a district court of the United States

for the district of West Virginia, held as aforesaid, on Friday, the 2nd day of October, 1874:

It appearing from the report of Commissioner H. M. Matthews filed in this cause on a former day of this term, and from affidavits filed in this cause, that certain of the original papers of the cause, including the bill and exhibits and certain other pleadings, have recently been consumed by fire, on motion of the plaintiffs,
67 who filed certain papers as copies or as substantial copies of some of the said papers so consumed, with affidavits to their correctness as copies or as substantial copies, and moved that they be received in place of the said original papers which had been consumed, the court doth order that within sixty days from this 2nd day of October, 1874, after giving notice by publication once a week for four successive weeks in some newspaper printed in Greenbrier county, which shall be equivalent to personal service upon all the parties to this cause, the plaintiffs shall produce before the clerk of this court, in his office at Charleston, copies of the said consumed papers, or so many of them as they may be able to produce, or, in the event that they are unable to produce exact copies of said original papers, that they produce substantial copies of the same, with their proofs of the correctness of such copies, and the said clerk is ordered to receive said proofs, as well as any proofs offered by any party controverting the correctness of such copies, and to report the said copies, together with all affidavits and proofs offered in support of or against their correctness, to the judge of this court in vacation without delay, and the court, without now passing upon the certain exceptions to the said report of Commissioner Matthews en-
68 dorsed thereon by the White Sulphur Springs Company, doth recommit the said report to said commissioner, with instructions to enquire into the matters suggested by said exceptions and to take any evidence bearing upon the same that may be offered by any of the parties to this suit.

And the said commissioner shall give notice of the time and place of his proceedings hereunder by publication once a week for four successive weeks in some newspaper published in Greenbrier county, which shall be equivalent to personal service upon all the parties to this suit, and he shall report his proceedings, with all evidence taken by him, to this court; and the court doth further order that Henry M. Matthews, commissioner, shall, upon the termination of the present lease to George L. Peyton & Co., of the White Sulphur Springs property in the proceedings mentioned, take charge of the said property and hold and control and preserve the same until the further orders of this court, with directions to take out such insurance thereupon as may, in his discretion, be proper and necessary.

And the said commissioner is further authorized and directed to take steps to fill the ice-houses with ice the coming winter.

69 And at another day, to wit, clerk's office, district court of the United States, district of West Virginia, at Charleston, December 1st, 1874:

The plaintiffs this day, by their counsel, produced before the clerk of this court, in his said office, in pursuance of a decree entered in this cause on the 2nd day of October, 1874, and of notice of the production of the papers and proofs hereinafter mentioned, duly published, as required by said decree, the following papers and proofs, to wit: The original draft of the bill of complaint in said cause, a true copy of which was the bill actually filed in the cause and which was destroyed by fire, proved by the affidavit of Wm. A. Quarrier, Esq., of counsel for complainants.

Also an office copy of the subpœna in chancery originally issued in this cause on the 27th day of January, A. D. 1868, acceptance of service of which subpœna is endorsed thereon by A. T. Caperton, in his own right and his several ex'l characters; L. M. Calwell, E. S. Calwell, John B. Calwell, Bedford Calwell; Samuel C. Beard, adm'r, &c.; John Lydenstricker, adm'r, &c.; James K. Hull, James H. Nesmith, P. Byrne, S. C. Ludington, David Watts, Jesse Bright, Geo. White; Sam'l Tuckwiller, adm'r, &c.; Thos. A. Bell, Jacob Eakle, James
M. Nichol, Paul McNeals, ex'c't'r, and Andrew D. Johnston,
70 adm'r of George Johnston, dec'd, and Floyd Estill, supported by the affidavit of A. C. Snyder & Alexander F. Matthews, which affidavit also proves the service of the original process issued in this cause upon all the defendants except those who had died or become insane since the institution of this suit, and as to whose personal representatives an order of revival was made at the spring term, 1874, of this court, and except also those as to whom such acceptance is shown by the endorsement upon the copy of the subpœna filed with said affidavits; a copy of the notice of production of which papers and proof, together with proof of its due publication, is also filed; all of which is respectfully reported to the judge of this court in vacation.

Teste: JASPER Y. MOORE,
Clerk D. C. U. S., D. W. Va.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held at Charleston, on Monday, the 8th day of February, 1875:

This cause came on this day to be heard again upon the papers formerly read, and, on motion of the complainants and for reasons appearing to the court, it is adjudged, ordered, and decreed that
Henry M. Matthews, special commissioner, be, and he is here-
71 by, directed to rent privately the said White Sulphur Springs property until the first day of November, 1875, for a sum not less than $16,002, the cash rent paid for the said property for the Springs season of 1874, and the renter shall be required to pay in cash in addition to said sum the cost of insurance now on said property, the taxes of every kind for the current year, and the cost of supplies of wood, ice, &c., which the said commissioner has provided for the next Springs season.

And it is further adjudged, ordered, and decreed that if the said commissioner cannot rent the said property privately as aforesaid within thirty days from the date of this decree, then the said com-

missioner shall rent the same publicly on the premises, after advertising the renting thereof for four successive weeks in some newspaper published in the town of Lewisburg,

And the said commissioner shall take proper notes, with good personal security, for the said rent, payable in four equal installments on the 1st and 15th days of August and the 1st and 15th of September, 1875, respectively, collect the same and hold it subject to the order of the court; and this decree shall be without prejudice to the right of any party to this suit to apply at the next regular term of this court for a decree for the sale of said property.

72 And at another day, to wit, — clerk's office of the district court of the United States for the district of West Virginia, at Charleston, on the 25th of February, A. D. 1875, in vacation:

This day the commissioner in this cause, Henry M. Mathews, returned his supplemental report, made in pursuance of the decree in this cause rendered on the 2nd day of October, 1874, which is filed in the papers of this cause.

Teste: JASPER Y. MOORE, *Clerk.*

And at another day, to wit, at a district court of the United States for the district of West Virginia, held at Charleston, on Friday the 23d day of April, 1875:

This day came the parties, by their attorneys, and Floy Estill, by leave of the court, presented and filed his answer to the complainants' bill, and by like leave presented and filed his exceptions to the report and supplemental report herein made by Commissioner Henry M. Mathews; to which answer the complainants reply generally.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Tues-
73 day, the 27th day of April, 1875:

On motion of the White Sulphur Springs Company, leave is granted to said defendant to file their answer, which is here done, and on their further motion they have leave to file a supplemental answer within sixty days from this date.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Wednesday, the 28th day of April, 1875:

This cause came on to be further hea-d at this term and was argued by counsel. On consideration whereof it is decreed and ordered that the accounts of debts due by the White Sulphur Springs Company, which were returned by Commissioner H. M. Mathews on the 29th day of September, 1874, and the 25th of February, 1875, be recommitted to the same commissioner, who shall restate the same according to the following instructions:

1st. He shall give notice of the time and place of taking said account by publication once a week for four weeks successively in a newspaper published in the county of Greenbrier and in one published in the City of Richmond, Virginia, in which publication he

shall warn all creditors of the White Sulphur Springs Com-
74 pany to appear and file with said commissioner evidence of
their said claims, and he shall further warn all such creditors in such publication that only such claims as are proved before said commissioner will be allowed to participate in the distribution of the funds arising from the rents or the sale of the said White Sulphur Springs.

2d. He shall state all such debts as may be proved before him in classes, showing their respective priorities of lien and also the names of the parties entitled thereto and which of said parties desire a sale of said property.

3d. He shall return said account to this court with copies certified by himself of the evidences of debt which may be exhibited before him, and all evidence taken in respect to the same, with any other matter specially stated deemed pertinent by himself or required by any party to be so stated; and the court doth order that the publication aforesaid shall be equivalent to personal service of notice on all the parties to this suit, and the court doth decline to ratify and confirm the contract of lease made by the White Sulphur Springs Company with Geo. L. Peyton and Edward McMahan, a copy of which is filed with Com'r Mathews' report, dated the — day of ——, 1875, and doth
also disapprove and reject the contract of lease made
75 by Com'r Mathews to Geo. L. Peyton on the 12th day of
April, 1875, also mentioned in his said report, but doth approve and accept the proposition made by Geo. L. Peyton & Co. to said com'r for the lease of said property for the present year during the present term of this court, by which said Peyton & Co. undertake to rent the White Sulphur Springs property for the present year and to pay therefor the sum of thirteen thousand dollars in money, viz., $8,000 for the hotel and $5,000 for the farm, payable in four equal instalments, on the 1st and 15th days of August, 1875, and the 1st and 15th days of September, 1875, and also to pay the premium for the insurance of said property for the present year and all taxes thereon for the present year, and also the amount already expended by Com'r Mathews for wood and ice for the present year, which premium and amount expended aggregate $2,800.00, which sum the said Peyton & Co. have already paid; and in addition thereto the said Peyton & Co. bind themselves to expend during the present year the sum of five thousand dollars in repairs upon said property under the supervision and with the approval of Com'r Mathews, and the said Peyton & Co. shall furnish to the said Mathews satisfactory vouchers for all expenditure for repairs, and they also undertake to give such security for the performance of the contract
on their part as may be approved by Com'r Mathews and
76 within ten days from this day; and the court doth further
order that Com'r Mathews shall, after giving notice for at least 30 days in some newspaper printed in Lewisburg, W. Va., Richmond, Va, Baltimore, Md., and elsewhere, if he should deem it judicious to do so, proceed on some day in August, 1875, at the White Sulphur Springs, to rent out said property at public auction

for the term of two years, ending first November, 1877, subject, however, to the ratification of this court, and the said commissioner is directed to stipulate that the lessee shall have the right to apply one-fourth of the rent to improvements and repairs on the property under direction of said com'r, and the said commissioner is directed to require that the lessee shall pay the taxes on said property and insurance thereon to the extent of one thousand dollars per annum in premiums; and Commissioner Mathews is further directed, after the 31st day of August, 1875, to advertise that he will, in obedience to the instructions of this court, receive open bids for the purchase of the White Sulphur Springs property at any time prior to the 1st day of spring term, 1876, of this court and report all such bids to the court, such advertisement to be published in such newspapers and for such length of time as said commissioner may deem judicious; and it appearing that when the White Sulphur Springs property was sold in
77 1857 to Allen T. Caperton & others a reservation was made in favor of Wm. B. Calwell of a life estate in the lot and dwelling-house and other buildings thereon then occupied by him, together with the privilege of the grounds, the Sulphur Springs, and other waters, and fuel from the premises for the use of himself and family during his life, the same having been guaranteed to him by the said Caperton & others before they executed the conveyance of the property to the White Sulphur Springs Company, and by said company before executing any lien thereon, but the instrument of writing evidencing the same was placed in the custody of Wm. H. McFarland, who has since died, and said instrument of writing cannot be found; on motion of the said Calwell, and with the consent of the parties to this suit, the court doth recognize and confirm the right of the said Calwell to his life interest in said lot and buildings thereon, the said dwelling-house having, within the last year, been destroyed by fire, together with the privileges aforesaid.

And the court, having examined the account of Com'r Matthews of the receipt and disbursements of the rent of the White Sulphur Springs for the year 1874, doth approve and confirm the same.

78 And at another day, to wit, in the U. S. district court for the district of West Virginia, at Charleston, the 20th day of August, 1875, in vacation:

On the petition of the White Sulphur Springs Company this day filed, it is ordered that the proposition of Geo. L. Peyton & Co., as set forth in the Exhibits 3 & 4, filed with said petition, should be accepted. It is therefore adjudged, ordered, & decreed that the right of the White Sulphur Springs Company to erect a hotel at the depot of the Chesapeake & Ohio rail road at the White Sulphur Springs be, & the same is, transferred to the said Geo. L. Peyton & Co. upon the following terms, to wit:

The hotel to be erected at the depot aforesaid shall be such as to fulfil the requirements of the agreement between the said White Sulphur Springs Company & the said Chesapeake & Ohio Railroad Company, as shown by the records of the circuit court of Greenbrier

county. The said hotel shall cost not less than twenty thousand ($20,000) dollars nor more than forty thousand ($40,000) dollars, and shall be commenced without delay & completed by June 1, 1876, & be kept insured by the said George L. Peyton & Co. at their cost, and the said Geo. L. Peyton & Co. shall pay all taxes chargeable against said hotel; and the said hotel shall be held and occupied by the said Geo. L. Peyton & Co. for the term of five
79 years from the first day of November, 1875, with the rights and privileges provided for in the proposition first submitted by said Geo. L. Peyton & Co., marked No. 3, without rent, & at any time after the expiration of the said term of five years the said hotel may be taken and paid for by the White Sulphur Springs Company or their vendees at the valuation of appraisers, one of whom shall be selected by the said White Sulphur Springs Company & the other by the said Geo. L. Peyton & Co., & their umpire, in case of disagreement; and, on payment of the value thus ascertained of said hotel, the possession thereof shall be surrendered to the said White Sulphur Springs Co. or their vendees or assigns. The said Geo. L. Peyton & Co. shall, before erecting the said hotel, submit the plan & specifications thereof to Henry M. Mathews, special commissioner in this cause, for his approval, & enter into contract in writing with said comm'r, binding themselves to erect the said hotel in accordance with the plan & specifications approved by said comm'r.

And the court reserves the right to modify the said proposition of Geo. L. Peyton & Co., the said Peyton & Co. being saved harmless in the premises; and the whole or portions of the property of the White Sulphur Springs Company may be sold during the said term of five years, subject to the rights of the said Peyton & Co.

80 And at another day, to wit, at a district court of the United States for the district of West Virginia, held at Charleston, on Friday, the 15th day of October, 1875:

This day came George L. Peyton & Co. and presented their petition, which is filed by leave of the court, and, upon consideration thereof and by consent of parties, by their counsel, it is decreed and ordered that the decree heretofore entered in this cause on the — day of August, 1875, be, and the same is, so far changed and modified as to increase the maximum sum authorized by the court to be expended by the said G. L. Peyton & Co. in the erection of a hotel from forty thousand dollars ($40,000) to seventy-five thousand dollars ($75,000), and so much of said sum as shall be used shall be expended in erecting a hotel upon the site designated therefor on the topographical map of the White Sulphur Springs property made by Wm. P. Smith, and between the road and the railroad, as laid down on said map.

And on the same day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Friday, the 15th day of October, 1875:

81 This day came W. W. Gordon and J. H. Carrington, and by leave of the court filed their petition in this cause, which

the court takes time to consider, and by consent of all parties, by their counsel, it is decreed and ordered that Commissioner H. M. Mathews pay out of the funds now in his hands two hundred dollars — Wm. A. Quarrier, Esq., on account of fees for services rendered in this cause; and it appearing to the court that after having paid the interest for one year on the Singleton debt and other proper charges against the fund now in the hands of said commissioner there is still a balance remaining in the hands of said commissioner, it is therefore, by consent of counsel as aforesaid, further decreed and ordered that the said commissioner shall pay out of said balance four per cent. as, of, and on account of the accruing interest for this year on the principal of debts of classes Nos. 2, 3, 4, 5, & 6, as stated in the reports of said commissioner heretofore filed.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Monday, the 24th day of April, 1876:

John W. Arbuckle, special receiver of the circuit court of Greenbrier county in the suit of R. Stalnaker & Co. *vs.* Lewis M.
82 Calwell, having this day filed his petition in this suit, from which it appears that by virtue of a judgment and execution therein exhibited he has a lien on the fund reported by Com'r H. M. Mathews in favor of Lewis M. Calwell; that the am't of said judg't is $139.51, with interest thereon from the 7th day of June, 1875, till paid, and $9.20 costs, it is therefore ordered that H. M. Mathews, com'r in this cause, out of the first money which may come into his hands for the benefit of said Lewis M. Calwell, shall pay to the pl't'ff in said petition the said sum of $139.51, with interest and costs as aforesaid, and the costs of this petition.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Friday, the 28th day of April, 1876:

It is adjudged and ordered that—

1. The report of Commissioner Mathews marked No. 1 and filed in open court on the 21st day of April, 1876, and the report of same commissioner marked No. 2, filed this day, to neither of which is there any exception, be confirmed.

2. It appearing from said report No. 1 that there are creditors of the White Sulphur Springs Company who did not present their claims against said company to said commissioner, so that
83 the same are not mentioned in the said report, it is further ordered that Commissioner Mathews do publish a notice in the Greenbrier Independent once a week for four weeks successively calling upon all creditors of said company who have not presented their claims and the evidence to sustain them to do so on or before some day to be designated in said notice and at such place as he may therein designate, and said commissioner is directed to classify all such claims as may be so presented according to their respective priorities and make report thereof to the court.

3. And it further appearing from said report that some of the

creditors of said company claim that if the assets of said company should turn out to be insufficient to discharge all the debts thereof that then the holders of coupons which have been severed and transferred by the holders of the bonds from which they have been so severed are entitled to priority over the bonds and coupons not transferred, such coupons, however, being entitled to priority according to the dates of their maturity, upon which claim the commissioner has expressed no opinion, but submitted the same to the consideration of the court, and the court, having considered the same, is of opinion and doth declare that the proposition set forth by said creditors, as above stated, is equitable and just.

84 4. And the court, having confirmed report No. 2, doth approve, ratify, and confirm the contract of lease made by Commissioner Mathews with Geo. L. Peyton & Co., as set forth in said report, for the term of two years, commencing November 1st, 1875, and ending November 1st, 1877; and the court doth further order that said Peyton & Co. shall have the privilege of expending, under the supervision of Commissioner Mathews, as provided for in said contract, for and during the first year of the said lease, all the money which, under said contract, they have the right to expend in repairs and improvements, &c., during the two years, provided that all expenditures made the first year over and above one-fourth of the annual rent shall not be deducted out of the first year's rent and not less than one-fourth of said annual rent shall be so expended the first year.

5. And the court, approving, doth also ratify and confirm the contract mentioned by Commissioner Mathews in his report No. 2 as made by him with said Geo. L. Peyton & Co. in respect to the erection of a hotel at the depot, on the Chesapeake & Ohio railroad, at the White Sulphur Springs.

6. Upon hearing the petition of Geo. L. Peyton & Co., filed this day, together with exhibits accompanying the same, it is further ordered and decreed that Commissioner Mathews do ascer-

85 tain and report what sums of money, if any, that said Geo. L. Peyton & Co. expended in repairs of the White Sulphur Springs in the year 1875 over and above the sum of 5,000 dollars, which it was agreed that they should expend out of the rent for that year, and whether such expenditure in excess of said sum was necessary for the preservation of said property from rapid deterioration and decay, and whether said expenditures were judiciously made and at reasonable prices.

7. And it further appearing by a special statement of Commissioner Mathews, marked No. 3, that the holders of the Singleton debts insist that they are entitled to the interest on the accrued interest upon their debt, amounting to $36,000, on none of which have they received or been allowed interest for seven years, while the commissioner has allowed interest upon the accumulated interest of other debts, represented by coupons, over which the said Singleton's debts have priority, and that said sum of $36,000 should be made an interest-bearing fund from this day, the court is of opinion & doth order that, in view of the fact that the property conveyed to

secure the said Singleton debts is confessedly ample, if sold, to pay the same, principal and interest, and that in the interest of the holders of subsequent liens the said sale has been from time to time postponed and is still postponed, the said accumulated interest of $36,000 should constitute a principal sum, bearing interest
86 from this date.

8. And it is further ordered that the said Commissioner Mathews do proceed to collect the rent reserved in the contract of lease, in the report No. 2 mentioned, as the several instalments thereof fall due, and that when so collected do distribute the same in the same manner as he was directed to distribute the rent of 1875 by a previous order of this court, and make report thereof to the court.

9. It is further ordered and decreed that the claim of George L. Peyton & Company, mentioned on the last page of report No. 1, hereinbefore mentioned, that they are entitled to a lien superior to all others on the property of the White Sulphur Springs Company for the sum of $3,741.41, with interest on $2,000, part thereof, from the 27th day of July, 1871, and on $572.77, another part thereof, from the 26th day of August, 1871, and on $1,168.64, the residue thereof, from the 30th day of August, 1871, which said sums the said Peyton & Co. allege were paid by them for taxes assessed against the said White Sulphur Springs Company prior to their becoming the lessees of the property of said company, be referred to Commissioner Mathews, who is directed to examine the same, receive any evidence which may be submitted to him in respect thereto, and ascertain whether said sum, with interest thereon as aforesaid, or any
87 & 88 part thereof does properly constitute a lien upon said property, and, if so, whether such lien is entitled to priority over all or any other liens thereon, and make report thereof to this court; but said commissioner shall give notice of the time and place of making such examination and inquiry by publication in the Greenbrier Independent once a week for four successive weeks, which publication, as well as that hereinbefore ordered, shall be equivalent to personal service upon all the parties or any of them.

10. This order is entered with the consent of the parties, represented by the following attorneys, as appears from their endorsement on the original order, to wit, Joseph Bryan, Samuel Price, H. H. Marshall, & A. C. Snyder.

The report of Commissioner H. M. Mathews, and marked No. 1, referred to in the foregoing order, is in the words and figures following, to wit:

89 & 90 "*Report No.* 1."

In the District Court of the United States for the District of West Virginia.

CHAS. S. GAY & *als.*

vs.

THE WHITE SULPHUR SPRINGS COMPANY & *als.*, Defendants.

LEWISBURG, WEST VIRGINIA, *March* 30, 1876.

Hon. J. J. Jackson, judge of said court:

The commissioner respectfully reports that in obedience to a decree entered in the above cause on the 25th day of April, 1875, and in pursuance to a notice published as required by said decree, a copy of which is hereto attached, he proceeded, at the time and place mentioned therein, to restate the accounts recommitted to him in the manner required by the decree aforesaid.

All debts proved before him are stated in classes according to their priorities, and the statement shows to whom the bonds of the White Sulphur Springs Company were issued and by whom the said debts and bonds are now held or represented. The evidence of the debts and the bonds, or copies thereof duly certified, are returned with this report. Persons owning bonds which am't in the aggregate to $495,456.46 desire a sale of the White Sulphur Springs property, and of this amount the sum of $214,201.36 is of those classes which are prior to class 9, and the sum of $166.012.36 is of class 9, and of $115,242.74 of classes subsequent to class 9. Persons representing debts amounting to $87,859.59 do not desire a sale of said property; of this sum $9,712.70 are of classes 1, 4, & 5; $17,926.30 of class 9, and $60,220.59 of classes 10, 11, 12, 14, 29, & 33.

Many persons whose debts were presented and proven expressed no wish as to a sale. The total amount of the debts p-oven is $985,867.53.

91 In the U. S. Dist. Court for the Dist. of W. Va. In Chancery.

CHAS. S. GAY & *als. vs.* THE WHITE SUL. SP'GS CO. & *als.*

To Henry M. Mathews, Esqr., commissioner in the above-entitled cause:

As the assignee, holder, and representative of a number of the coupons which have been severed from the bonds of the White Sul. Springs Co., to which they were originally attached, I shall claim, if the proceeds realized from the assets of said company for the payment of its debts are insufficient to pay in full all of said coupons and bonds, that the said severed and transferred coupons are entitled to be first paid in preference to the balance of said bonds and coupons held by the original creditors, their representatives or assigned, subsequently to the assignment of those I represent. McClintic *vs.* Wise's Adm'r, 25 Grattan.

I will also insist that all the coupons of the said bonds, whether severed or not, bear interest from the time of their maturity, and I respectfully request you to report specially upon these matters.

ALEX'R F. MATHEWS.

9 Wallace, 477; 14 Wal., 282; 20 Wis., 50; 1 Wall., 206; 3 Wallace, 332; 3 McLean, 472; 54 Penn., 94; 18 Grat., 776; Lo. Law Review for April, 1872, p. 189, *et seq.*; 1 Nat. B'k, Tenn. Sup.
92 Ct. R'p't, at Dec'r T., 1872, in Lo. Law Review, April, 1873, p. 411.

93 *Special Report at the Request of Certain Creditors.*

In the District Court of the United States for the District of West Virginia.

C. S. GAY & *als.*

vs.

THE WHITE SULPHER SPRINGS COMPANY & *als.*

LEWISBURG, WEST VIRGINIA. *March* 30, 1876.

Hon. J. J. Jackson, judge of said court:

In accordance with the request hereto attached the commissioner respectfully reports that certain creditors of the White Sulpher Springs Company will insist, if the proceeds realized from the sale of the assets of said company are insufficient to pay its debts in full, that the severed and transferred coupons are entitled to be paid in preference to the balance of said bonds and coupons held by the original creditors or their representatives, and that bonds and coupons which have been assigned are to be preferred in the order of assignment. The case of McClintic *vs.* Wise's Adm'r, 25 Gratt., and the cases cited in the opinion of the court in that case are relied on to sustain this proposition.

The commissioner has already stated in the report filed Sept. 29th, 1874, that the coupons bear interest from the date of their maturity.

Class No. 1.

	No. of bond.	Present owner or representative.	To whom issued.	Principal.	From July 1, '62, interest to July 1st, 1868.	Int. from July 1,'74. to July 1, '76.	Total.
94		"The Singleton debt." This debt consists of twenty certificates of indebtedness of five thousand dollars each.					
p.	10	Patrick Cullen	Jno. Tabb	5,000 00	1,800 00	300 00	7,100 00
p.	1 2 3	R. P. Richardson, executor of J. P. Taylor, dec'd.	J. V. Wilcox Do. Do.	15,000 00	5,400 00	900 00	21,300 00
p.	1 5 9	Jno. J. Moorman	Rich'd Singleton Jas. Macfarland Jno. Tabb	15,000 00	5,400 00	900 00	21,300 00
p.	6 17	Lewis M. Calwell	Rich'd Singleton Jno. Tabb	10,000 00	3,600 00	600 00	14,200 00
p.	2 3 4 5	Mrs. E. F. Calwell	Rich'd Singleton Do. Do. Do.	20,000 00	7,200 00	1,200 00	28,400 00
p.	4	Miss C. G. Calwell	Thomas Smith	5,000 00	1,800 00	300 00	7,100 00
c.		A. N. Welford		5,000 00	1,800 00	300 00	7,100 00
p.	7 8 8	Wm. B. Calwell	Norman Stewart Do. Wadsworth, Williams & Co.	15,000 00	5,400 00	900 00	21,300 00
p.	18	Wm. Gibboney	Lancaster, Denly & Co	5,000 00	1,800 00	300 00	7,100 00
p.		A. F. Matthews	Rich'd Singleton	5,000 00	1,800 00	300 00	7,100 00
		Total of this class		100,000 00	36,000 00	6,000 00	$142,000 00

The interest on the whole of this debt was regularly paid until July 1st, 1862. See deposition of Wm. B. Calwell and the certificate and affidavit of R. H. Maury. The interest from July 1st, 1862, to July 1st, 1368, is still unpaid; since July 1st, 1868, the interest has been paid under a decree in this cause. The lien which secures this debt attaches to 950 acres of land on which are most of the improvements and the White Sulphur Springs. See Exhibit No. 1. Portions of this tract of 950 acres have been conveyed to Joel McPherson & others, and according to a decree rendered in this cause April 24, 1874, the 200 laid off and set apart by the former owners to be held in common must be sold first and the proceeds of sale applied to the discharge of this said lien before any of those portions thereof conveyed as aforesaid can be sold. See said decree of April 24th, 1872. The sum of eighteen hundred & twenty-three $\frac{99}{100}$ dollars of the accrued interest on the bonds of this class held by Lewis M. Calwell is due to Allen T. Caperton. See Exhibit (O).

CLASS No. 2.

	No. of bond.	Present owner or representative.	To whom issued.	Principal.	Interest to Oct. 15, 1875.	Interest on coupons.	Total.
Page 95.							
p.	112	A. F. Mathews	Joel McPherson	1,000 00	900 00	277 20	2,177 20
p.	113	W. A. Stuart	Do.	1,000 00	900 00	277 20	2,177 20
p.	114	A. F. Mathews	Do.	1,000 00	900 00	277 20	2,177 20
p.	115	W. A Stuart	Do.	802 33	721 95	222 40	1,746 68
		* Total of this class		$3,802 33	$3,421 95	$1,054 00	$8,278 28

The bonds of this class were issued in lieu of a judgment of Oct. 22d, 1839, of the circuit court of Greenbrier county, in favor of T. D. Watson *vs.* Calwell.

Class No. 3.

	No. of bond.	Present owner or representative.	To whom issued.	Principal.	Interest to Oct. 15, 1875.	Interest on coupons.	Total.
p.	101	W. A. Stuart	Wm. H. Macfarland	1,000 00	900 00	277 20	2,177 20
p.	102	W. A. Stuart	W. H. Macfarland	1,000 00	900 00	277 20	2,177 20
p.	103	W. A. Stuart	W. H. Macfarland	1,000 00	900 00	277 20	2,177 20
p.	104	W. A. Stuart	W. H. Macfarland	332 27	298 95	92 09	723 31
		Total of this class		$3,332 27	$2,998 95	$923 69	$7,254 91

These bonds were issued for a judgment of the circuit court of Greenbrier county at the October term, 1840, in favor of Shields & Summerville. See deposition of W. B. Calwell, Exhibit G, & judgment and copy thereof.

Class No. 4.

Page 96							
	99	Arch'd Lewis	Elizabeth Stuart's ex.	60 57	54 45	16 72	131 74
p.	100	J. M. Lydenstricker, adm.	Jno. Surbough	140 77	126 60	39 00	306 37
	126	A. T. Caperton, ex'r	A. T. Caperton, ex.	346 85	312 15	96 15	755 15
p.	130	Sam'l Price	Sam'l Price	105 30	94 65	29 15	229 10
p.	137	W. A. Stuart	Joel McPherson	989 97	890 85	274 42	2,155 24
		Total of this class		$1,643 46	$1,478 70	$455 44	$3,577 60

The bonds of this class were issued in lieu of judgments rendered at the May term, 1841, of circuit court of Greenbrier county. See deposition of Wm. B. Calwell, Exhibit (G), and the judgments in said exhibit referred to.

Class No. 5.

p.	90	W. A. Stuart	W. H. Macfarland	1,000 00	900 00	277 20	2,177 20
p.	91	A. F. Mathews	W. H. Macfarland	1,000 00	900 00	277 20	2,177 20
p.	92	W. A. Stuart	W. H. Macfarland	1,000 00	900 00	277 20	2,177 20
p.	93	W. A. Stuart	W. H. Macfarland	1,000 00	900 00	277 20	2,177 20
p.	94	W. A. Stuart	W. H. Macfarland	1,000 00	900 00	277 20	2,177 20
p.	95	W. A. Stuart	W. H. Macfarland	1,000 00	900 00	277 20	2,177 20
p.	96	W. A. Stuart	W. H. Macfarland	796 98	717 30	220 93	1,735 21
p.	98	Jno. A. North's adm.	Jno. A. North's adm'r	524 30	471 75	145 30	1,141 35
	125	A. T. Caperton	A. T. Caperton	853 21	767 85	236 49	1,857 55
	147	Jno. W. Johnston, att'y	Henry W. Bowyer	704 68	634 20	195 28	1,534 16
p.	150	Jno. A. North's adm'r	Wm. Paxton's adm'r	702 43	632 10	194 68	1,529 21
p.	67	A. F. Mathews	Jno. Cauley	319 87	307 04	105 93	732 84
				$9,901 47	$8,930 24	$2,761 81	$21,593 52

One coupon of bond No. 96 for forty-seven $\frac{82}{100}$ dollars, due October 15th, 1861, is represented by A. F. Mathews.

The bonds of this class were issued in lieu of judgments rendered at October term, 1841, of circuit court of Greenbrier county. See deposition of Wm. B. Calwell, Exhibit G, & judgments therein referred to.

CLASS No. 6.

	No. of bond.	Present owner or representative.	To whom issued.	Principal.	Interest to Oct. 15, 1868.	Interest on coupons to Oct. 15, 1875.	Total.
Page 97.	1	Jno. Echols, trustee	Henry Erskine's ex'r	21,848 69	10,487 36	6,056 45	38,392 50
p.	2	Sam'l Price, trustee	" "	21,848 69	10,487 36	6,056 45	38,392 50
	3	Jno. W. Johnston, trustee	" "	21,848 69	10,487 36	6,056 45	38,392 50
p.	4	A. F. Mathews	S. C. Beard	907 67	*816 90	251 50	1,976 07
		Total of this class		$66,453 74	$32,278 98	$18,420 85	$117,153 57

*To Oct. 15, 1875.

Of this class A. F. Mathews owns four (4) coupons of bond No. 2 for $1,310.92, and due, respectively, on Oct. 15, 1864, 1865, 1866, & 1867, and one coupon of bond No. 3 for same amount, due Oct. 15, 1861; total principal of said five coupons amounting to $6,554.60.

And John Stewart owns one (1) coupon of bond No. 1 for $1,310.92, due Oct. 15, 1861, and six coupons for same amount each of bond No. 3, due, respectively, Oct. 15, 1862, 1863, 1864, 1865, 1866, & 1867; total principal of said seven coupons amounting to $9,176.44.

One coupon of bond No. 2 for $1,310.92, due Oct. 15, 1863, is owned by R. Crockett.

M. & M., attor. of R. C., Jr. Rec'd Dec'r 10, 1877.

These bonds were issued for debts secured by the deed of trust of Nov'r 3rd, 1841. See said deed, deposition, and exhibits.

CLASS No. 7.

	97						

Class No. 8.

	No. of bond.	Present owner or representative.	To whom issued.	Principal.	Interest to Oct. 15, 1875.	Interest on coupons.	Total.
Page 98.					(531 60)		
p.	138	W. A. Stuart	Geo. White	590 11	513 60	163 73	1,267 44
p.	144	Jas. K. Hull	Jas. K. Hull	569 42	512 40	157 82	1,239 64
		Total of this class		$1,159 53	$1,026 00	$321 55	$2,507 08

Of this class one coupon of bond No. 138, due Oct. 15th, 1861, for $35.44 is represented by Alex. F. Mathews, att'y, &c.

The bonds of this class were issued for judgments rendered at circuit court of Greenbrier county at the May term, 1842. See said Exhibit (G).

Class No. 9.

Page 99.							
	5	G. W. Wilson, adm'r	Ths. M. Smith	5,327 92	4,795 05	1,476 87	11,599 84
p.	6	W. A. Stuart	Joseph Allen	1,333 87	1,200 45	369 74	2,904 06
	7	R. L. Maury for est. of M. F. Maury, dec'd.	A. T. Caperton, assignee	2,000 00	1,800 00	554 40	4,354 40
	8	R. H. Maury, ag't for Jordan W. Maury.	" " "	2,000 00	1,800 00	554 40	4,354 40
	9	R. H. Dulaney	" " "	2,000 00	1,800 00	554 40	4,354 40
	10	A. K. Phillips	" " "	2,000 00	1,800 00	554 40	4,354 40
	12	R. H. Maury, ag't for Jordan W. Maury.	" " "	1,174 95	1,057 45	315 65	2,548 05

CLASS No. 9.—Continued.

	No. of bond.	Present owner or representative.	To whom issued.	Principal.	Interest to Oct. 15, 1875.	Interest on coupons.	Total.
p.	13	W. A. Stuart	J. J. Moorman	2,000 00	1,800 00	554 40	4,354 40
p.	14	W. A. Stuart	" "	2.000 00	1,800 00	554 40	4,354 40
p.	15	W. A. Stuart	" "	2,000 00	1,800 00	554 40	4,354 40
p.	16	W. A. Stuart	" "	2,000 00	1,800 00	554 40	4,354 40
p.	18	W. A. Stuart	P. Cullen, assignee	1,194 44	1,074 90	331 35	2,600 69
p.	17	W. A. Stuart	J. J. Moorman	1,883 85	1,695 45	522 20	4,101 50
p.	19	W. A. Stuart	David Tuckwiller	5,579 14	5,021 10	1,546 50	12,146 74
	20	J. W. Harris, att'y	Chs. McClung & G. A. Rader, adm'r.	7,997 73	7,197 90	2,216 95	17,412 58
p.	21	N. Dickson	E. H. Farnsworth	400 79	360 71	111 06	872 56
p.	22	Geo. S. McNeil, ex'or	Paul McNeil	1,494 56	1,345 05	414 38	3,253 99
p.	23	A. C. Snyder, att'y	J. M. Nickell	471 29	424 05	130 60	1,025 94
p.	24	A. C. Snyder, att'y	R. Stalnaker	1,180 90	1,062 75	327 32	2,570 97
p.	25	R. F. Dennis, adm'r	Wm. Paxton's adm'r	1,963 50	1,767 15	544 28	4,274 93
p.	26	Ths. Mathews, s'ry part	Th's Mathews, suy. part	2,468 67	2,221 65	684 26	5,374 58
p.	28	P. Cullen	A. Duvall	1,375 58	1,237 95	381 29	2,994 82
p.	29	A. C. Snyder, att'y	Oliver F. Winchester	128 76	139 06	57 90	325 72
p.	30	A. C. Snyder, att'y	Rich'd Crouch, trustee	1,027 62	1,109 82	462 38	2,599 82
	31	Rob't Dickson's est., J. W. Harris, att'y.	Rob't Dickson	2,230 20	2,007 00	618 16	4,855 36
p.	32	W. B. Calwell	W. H. Macfarland, trustee	1,000 00	900 00	277 20	2,177 20
p.	33	W. B. Calwell	" " "	1,000 00	900 00	277 20	2,177 20
p.	34	W. C. Calwell	" " "	1,000 00	900 00	277 20	2,177 20
p.	35	W. B. Calwell	" " "	1,000 00	900 00	277 20	2,177 20
p.	36	W. B. Calwell	" " "	1,000 00	900 00	277 20	2,177 20
	37	Joel McPherson	" " "	1,000 00	900 00	277 20	2,177 20

	38	Joel McPherson	" " "	1,000 00	900 00	277 20	2,177 20
	39	Joel McPherson	" " "	1,000 00	900 00	277 20	2,177 20
	40	Joel McPherson	" " "	1,000 00	900 00	277 20	2,177 20
	41	Joel McPherson	" " "	1,000 00	900 00	277 20	2,177 20
p.	42	W. A. Stuart	" " "	1,000 00	900 00	277 20	2,177 20
		Forward		765 34	688 65	212 10	1,666 09
				$63,999 11	$57,806 14	$17,930 19	$139,735 44
Page 100.				$63,999 11	$57,806 14	$17,930 19	$139,735 44
p.	43	A. C. Snyder, att'y	Stuart McClung	2,008 74	1,807 80	556 80	4,373 34
p.	49	A. C. Snyder, att'y	J. M. Nickell, adm'r	981 21	883 05	271 98	2,136 24
p.	50	W. A. Stuart	Willis Mann	2,185 33	1,966 65	605 73	4,757 71
p.	51	W. A. Stuart	J. H. Boswell	2,784 90	2,506 35	771 95	6,063 20
p.	58	Sam'l Price, att'y	Jacob Heald & Co.	1,850 39	1,998 42	832 65	4,681 46
	59	Ould & Carrington, att'ys	Mrs. M. P. Callison, ex'r'x	2,384 57	2,146 05	660 98	5,191 60
p.	62	J. M. Lydenstricker, adm'r	Jno. Surbough	925 82	833 10	256 59	2,015 51
	64	R. H. Maury, ag't for Jordan W. Maury.	W. H. Macfarland, trustee	1,000 00	900 00	277 20	2,177 20
p.	65	W. A. Stuart	W. H. Macfarland, trustee	805 00	724 50	223 15	1,752 65
p.	66	Floyd Estill	Floyd Estill	325 11	292 60	90 09	707 80
p.	68	Ro. P. White, ex'r	Ro. P. White, ex.	1,002 37	902 10	277 84	2,182 31
p.	71	Lewis A. Phelps & A. C. Snyder, att'ys.	W. A. Harper, ex'r	1,000 00	900 00	277 20	2,177 20
p.	72	Lewis A. Phelps & A. C. Snyder, att'ys.	" "	1,000 00	900 00	277 20	2,177 20
p.	73	Lewis A. Phelps & A. C. Snyder, att'ys.	" "	1,000 00	900 00	277 20	2,177 20
p.	74	Lewis A. Phelps & A. C. Snyder, att'ys.	" "	1,000 00	900 00	277 20	2,177 20
p.	76	A. C. Snyder, att'y	Steele & McDaniel	626 02	563 40	173 53	1,362 95
p.	77	A. C. Snyder, att'y	" "	192 40	173 10	53 41	418 91
p.	78	A. C. Snyder, att'y	S. Hamilton & J. M. Nickell, adm'rs.	11,865 40	10,678 80	3,289 00	25,833 20
p.	79	Sam'l Hamilton, est.	Sam'l Hamilton	2,529 65	2,276 70	701 22	5,507 57
p.	80	A. C. Snyder, att'y	J. M. Nickell	2,529 64	2,276 70	701 22	5,507 56
p.	82	R. F. Dennis, adm'r	Personal representative of Jno. A. North.	1,000 00	900 00	277 20	2,177 20

CLASS No. 9.—Continued.

	No. of bond.	Present owner or representative.	To whom issued.	Principal.	Interest to Oct. 15, 1875.	Interest on coupons.	Total.
p.	83	R. F. Dennis, adm'r	" "	1,000 00	900 00	277 20	2,177 20
p.	84	R. F. Dennis, adm'r	" "	1,000 00	900 00	277 20	2,177 20
p.	85	R. F. Dennis, adm'r	" "	755 73	680 10	209 47	1,645 30
p.	86	A. C. Snyder, att'y	J. M. Nickell, adm'r	164 27	147 75	45 50	357 52
p.	87	A. C. Snyder, att'y	Ths. Nickell & Sam'l Hamilton, ex'rs.	1,763 47	1,587 15	488 80	3,839 42
	153	J. W. Harris, att'y	Jacob Fuller, adm'r	1,568 62	1,411 65	434 79	3,415 06
c.	155	J. F. Patton, att'y	Mary Letitia Clarke	342 97	308 70	95 03	746 70
c.	158	J. F. Patton, att'y	W. T. Clarke	342 97	308 70	95 03	746 70
p.	159	Sam'l Price, att'y	David H. Clarke	514 44	462 90	142 62	1,119 96
p.	160	Sam'l Price, att'y	Mrs. E. C. Clarke	685 93	617 25	190 16	1,493 34
	161	R. H. Maury, ag't	Branch b'k of Virginia at Buchanan.	4,452 09	4,006 80	1,234 09	9,692 98
c.	75	Ould & Carrington, att'ys	W. A. Harper, ex'r	742 17	667 80	205 68	1,615 65
c.	81	A. T. Caperton	Jas. Jarrett, Sr.	2,078 15	1,870 35	576 05	4,524 55
	154	Jas. B. Dorman, att'y	Jacob Fuller's adm'r	3,137 25	2,823 45	869 62	6,830 32
p.	159	Sam'l Price, att'y	David H. Clarke	000 00	000 00	000 00	0,000 00
		Forward		$121,543 72	$109,928 06	$34,200 77	$265,672 55
33							
Page 101.		Forward		121,543 72	109,928 06	34,200 77	265,672 55
	60	Jas. Frazer's est.	Jas. A. Frazer, ex'r	1,232 08	1,108 80	341 50	2,682 38
c.	11	A. T. Caperton	A. T. Caperton, assignee	2,000 00	1,800 00	554 40	4,354 40
c.	143	J. F. Patton	A. A. & M. Chapman, ex'r.	000 00	000 00	000 00	0,000 00
c.	156	J. F. Patton	Jno. E. Hughes	342 97	308 70	95 03	746 70
				$125,118 77	$113,145 56	$35,191 70	$273,456 03

52	W. A. Stuart	D. C. Brady, att'y	2,500 00	2,250 00	693 00	5,443 00
53	" "	" "	2,000 00	1,800 00	554 40	4,354 40
54	" "	" "	2,000 00	1,800 00	554 40	4,354 40
55	" "	" "	2,000 00	1,800 00	554 40	4,354 40
56	" "	" "	2,000 00	1,800 00	554 40	4,354 40
57	" "	" "	976 63	878 67	270 73	2,126 03
61	" "	James Long	1,644 00	1,775 52	739 80	4,159 32

Of this class A. F. Mathews, att'y, represents—

Page 102. One (1) detached coupon of bond No. 6 for $80.03;
Two (2) of bond No. 32 of $60 ea.;
Two (2) " " No. 33 of $60 ea.;
Two (2) " " No. 34 of $60 ea.;
Two (2) " " No. 35 of $60 ea.;
Two (2) " " No. 36 of $60 ea.;
Making a total of this class of detached coupons represented by him, $680.03.

R. H. Maury & Co. represent—

Four (4) detached coupons of Bond No. 7 of $120 ea.;
Three (3) " " " " " 9 " $120 ea.;
Four (4) " " " " " 10 " $120 ea.:
Three (3) " " " " " 11 " $120 ea.;
Five (5) " " " " " 35 " $60 ea.;
Making a total represented by them, $1,980.00.

The bonds of this class were issued for debts secured by the deed of trust of Oct. 10, 1842. See said deed, deposition, & Exhibits X & Y.

Class No. 10.

	No. of bond.	Present owner or representative.	To whom issued.	Principal.	Interest to ——— ———.	Interest on coupons.	Total.
Page 103.							
	141	Sam'l McClung's adm'r	Sam'l McClung	207 08	186 30	57 38	450 76
p.	145	R. F. Dennis, adm'r	Personal representative of Jno. A. North	1,051 65	946 35	291 47	2,289 47
c.	143	J. F. Patton	A. A. & M. Chapman, ex'r	482 91	434 55	133 84	1,051 30
				$1,741 64	$1,567 20	$482 69	$3,791 53

The bonds of this class were issued for judgments rendered at the October term, 1842, of circuit court of Greenbrier county, which began Oct. 13, 1842. See said deposition, exhibit, & judgment.

Class No. 11.

c.	131	A. T. Caperton	Jno. M. Dunbar, assignee	88 93	79 95	39 97	208 85

This bond was issued for a judgment of the county court of Greenbrier county at the November term, 1842. See said deposition, Exhibit (G), and judgment.

Class No. 12.

	No. of bond.	Present owner or representative.	To whom issued.	Principal.	Interest to Oct. 15, 1875.	Interest on coupons.	Total.
Page 104. c.	149	A. T. Caperton, ex'r	A. T. Caperton, ex'r	339 06	305 10	93 97	738 13

This bond was issued for a judgment of the circuit court of Greenbrier county, at the May term, 1843. See said deposition, exhibit, & judgment.

Class No. 13.

	123	J. W. Harris, att'y	Hugh Wilson, adm'r	1,446 06	1,301 40	400 83	3,148 29
	139	J. W. Harris, att'y	Joel McPherson	1,227 16	1,104 30	340 12	2,671 58
				$2,673 22	$2,405 70	$740 95	$5,819 87

The bonds of this class are for judgments rendered by the circuit court of Greenbrier county, at October term, 1844. See said deposition, exhibit, & judgment.

Class No. 14.

	No. of bond.	Present owner or representative.	To whom issued.	Principal.	Interest to Oct. 15, 1875.	Interest on coupons.	Total.
Page 105. p.	136	W. A. Stuart	Joel McPherson	1,065 94	959 25	295 45	2,320 64

This bond was issued for a judgment rendered at the October term of the circuit court of Greenbrier county, 1845. See said deposition, Exhibit (G), and judgment.

Class No. 15.

p.	132	W. A. Stuart	W. H. Macfarland, trustee	77 36	69 60	21 43	168 39
c.	135	A. T. Caperton, ex'r	A. T. Caperton, ex'r	249 40	224 40	69 11	542 91
p.	147	W. A. Stuart	W. H. Macfarland, trustee	815 76	734 10	226 10	1,775 96
				$1,142 52	$1,028 10	$316 64	$2,487 26

Of this class one coupon of bond No. 147 for forty-eight $\frac{94}{100}$ dollars, due Oct. 15, 1861, is represented by A. F. Mathews, att'y.

The bonds of this class were issued for judgments of circuit court of Greenbrier county, rendered at October term, 1846. See said deposition, exhibit, & judgments.

CLASS No. 16.

	No. of bond.	Present owner or representative.	To whom issued.	Principal.	Interest to —— ——	Interest on coupons.	Total.
Page 106. p.	124	J. M. Lydenstricker, adm'r--	John Surbough ----------	1,082 31	973 95	300 00	2,356 26

This bond was issued for a judgment rendered at October term, 1847, of circuit court of Greenbrier county. See said deposition, exhibit, & judgment.

CLASS No. 17.

	105						

CLASS No. 18.

	133	Wm. B. Calwell, pres't -----	Wm. Skeen, adm'r of Morrison, dec'd ----------	550 87	495 75	152 69	1,199 31

This bond was issued for a judgment of the county court of Greenbrier county, at August term, 1851. See said deposition, exhibit, & judgments.

Class No. 19.

	No. of bond.	Present owner or representative.	To whom issued.	Principal.	Interest to Oct. 15, 1875.	Interest on coupons.	Total.
P. 107. p.	106	A. F. Mathews, att'y	Jno. M. Anderson	1,048 70	943 80	290 70	2,283 20

This bond was issued for a judgment of the circuit court of Greenbrier county, rendered at the October term, 1851. See said deposition, exhibit, & judgment.

Class No. 20.

	121	R. H. Maury, ag't for J. W. Maury.	W. H. Macfarland	1,000 00	900 00	277 20	2,177 20
p.	122	W. A. Stuart	" "	740 65	666 45	205 26	1,612 36
				$1,740 65	$1,566 45	$482 46	$3,789 56

The bonds of this class were issued for a judgment of the circuit court of Henrico county, at the May term, 1852. See said deposition, exhibit, and judgment.

Class No. 21.

	No. of bond.	Present owner or representative.	To whom issued.	Principal.	Interest to Oct. 15, 1875.	Interest on coupons.	Total.
Page 108. p.	151	A. C. Snyder, att'y	Sam'l Hamilton & J. M. Nickel	1,194 89	1,075 35	331 20	2,601 44

This bond was issued for a judgment of circuit court of Greenbrier county, rendered at October term, 1853. See said deposition, exhibit, & judgment.

Class No. 22.

p.	108	W. A. Stuart	Joel McPherson	1,000 00	900 00	277 20	2,177 20
p.	109	W. A. Stuart	" "	1,000 00	900 00	277 20	2,177 20
p.	110	W. A. Stuart	" "	1,000 00	900 00	277 20	2,177 20
p.	111	W. A. Stuart	" "	648 20	583 35	179 66	1,411 21
				$3,648 20	$3,283 25	$1,011 26	$7,942 81

These bonds were issued for a judgment of the circuit court of Greenbrier county, rendered at the July term, 1855. See said deposition, exhibit, and judgment.

Class No. 23.

	134						

Class No. 24.

	No. of bond.	Present owner or representative.	To whom issued.	Principal.	Interest to Oct. 15, 1875.	Interest on coupons.	Total.
Page 109.	116	J. W. Harris, att'y	Joel McPherson	1,000 00	900 00	277 20	2,177 20
	117	J. W. Harris, att'y	" "	1,000 00	900 00	277 20	2,177 20
p.	118	W. A. Stuart	" "	744 69	670 20	206 42	1,621 31
				$2,744 69	$2,470 20	$760 82	$5,975 71

These bonds were issued for a judgment of the county court of Greenbrier county, rendered at March 28th term, 1857. See said deposition, exhibit, & judgment.

Class No. 25.

p.	148	A. F. Mathews, att'y	Gay Mathews & Co.	2,063 24	1,856 91	571 90	4,492 05

This bond was issued for a judgment of the county court of Greenbrier county of April 9th, 1857. See said deposition, exhibit, & judgment.

Class No. 26.

Page 110.							
p.	152½	Arch. Lewis, ex'r	Addison Frazer	542 45	488 10	150 33	1,180 88
p.	153	Floyd Estill	Floyd Estill	1,363 39	1,226 85	377 91	2,968 15
p.	154	A. C. Snyder, att'y	S. Hamilton & J. M. Nickell, adm'r.	357 10	321 30	98 96	777 36
p.	155	A. C. Snyder, att'y	J. M. Nickell	3,569 55	3,213 00	989 60	7,772 15
p.	157	A. C. Snyder, att'y	" "	1,369 46	1,232 10	379 48	2,981 04
p.	156	A. C. Snyder, att'y	" "	53 42	47 70	14 69	115 81
	158	Jas. W. Jackson	Alex. Jackson	130 55	117 45	36 31	284 31
	161	A. D. Johnston, adm'r	Geo. Johnston	204 25	183 75	56 59	444 59
p.	162	Sam'l Hamilton's est.	Sam'l Hamilton	95 61	85 95	26 46	208 02
p.	163	Rob't White	Rob't White	563 98	507 60	156 34	1,227 92
	164	E. F. Patton	Wm. Nelson	73 98	66 60	19 80	160 38
p.	165	Newton Dickson	Rich'd Dickson	497 27	447 30	137 76	1,082 33
	166	P. Beirne	Beirne & Nesmith	311 05	279 90	86 21	677 16
	167	P. Beirne	P. Beirne	205 00	184 50	56 82	446 32
	168	T. A. Bell	T. A. Bell	734 77	661 50	203 74	1,600 01
p.	174	P. Cullen	W. H. Ferrell	1,000 00	900 00	277 20	2,177 20
p.	177	W. A. Stuart	" "	1,000 00	900 00	277 20	2,177 20
p.	178	W. A. Stuart	" "	1,000 00	900 00	277 20	2,177 20
p.	179	W. A. Stuart	" "	678 75	610 88	188 22	1,477 85
	180	Lancaster & Lucke	P. A. Prindle	1,000 00	900 00	277 20	2,177 20
	181	W. D. Corse	" "	1,000 00	900 00	277 20	2,177 20
	182	W. D. Corse	" "	1,000 00	900 00	277 20	2,177 20
	183	W. D. Corse	" "	1,000 00	900 00	277 20	2,177 20
	184	Lancaster & Lucke	" "	1,000 00	900 00	277 20	2,177 20
	185	Lancaster & Lucke	" "	1,000 00	900 00	277 20	2,177 20
p.	186	P. Cullen	" "	1,000 00	900 00	277 20	2,177 20
p.	187	P. Cullen	" "	1,000 00	900 00	277 20	2,177 20
p.	188	P. Cullen	" "	1,000 00	900 00	277 20	2,177 20
	189	Lancaster & Lucke	" "	1,000 00	900 00	277 20	2,177 20
p.	193	Hugh A. Watts	Hugh A. Watts	1,027 00	924 30	284 68	2,235 98
p.	194	Hugh A. Watts	" "	1,028 00	925 20	284 96	2,238 16
p.	195	W. A. Stuart	— Davidson	398 05	358 20	110 32	866 57
p.	197	W. A. Stuart	S. C. Luddington	319 55	287 55	88 61	695 71

CLASS No. 27.—Continued.

	No. of bond.	Present owner or representative.	To whom issued.	Principal.	Interest to Oct. 15, 1875.	Interest on coupons.	Total.
p.	198	P. Cullen	Adie & Gray	1,130 52	1,017 00	313 23	2,460 75
	199	E. Y. Cannon, adm'r	E. Y. Carmon, adm'r	100 00	90 00	27 72	217 72
	200	E. Y. Cannon, adm'r	" "	100 00	90 00	27 72	217 72
		Forward		$27,853 70	$25,066 73	$7,720 06	$60,640 49
Page 111.		Forward		$27,853 70	$25,066 73	$7,720 06	$60,640 49
	201	E. Y. Cannon, adm'r	E. Y. Cannon, adm'r	100 00	90 00	27 72	217 72
	202	E. Y. Cannon, adm,r	" "	100 00	90 00	27 72	217 72
	203	E. Y. Cannon, adm,r	" "	100 00	90 00	27 72	217 72
	204	E. Y. Cannon, adm,r	" "	100 00	90 00	27 72	217 72
	205	E. Y. Cannon, adm,r	" "	67 88	61 05	18 80	147 73
				$28,321 58	$25,487 78	$7,849 74	$61,659 10

Page 112. Of this class three (3) coupons of bond No. 172 for fifty-one $\frac{18}{100}$ dollars each, or total of one hundred & fifty-three $\frac{54}{100}$ dollars ($153.54) are represented by Wm. B. Calwell.

One coupon of bond No. 172 for $51.18; one of bond No. 179 for $40.74; one of bond No. 195 for $23.88, making a total of $115.80, are represented by A. F. Mathews, att'y.

These bonds were issued for debts not theretofore liens, and which were made liens by deed of Oct. 15, 1857.

The bonds of classes 2 to 27, both inclusive, are secured by deed of trust of Oct. 15, 1857, Exhibit No. 7. This lien attaches to about 7,000 acres of land described in said deed and shown by plat accompanying the deed of Nov. 22, 1853, from Calwell & *als.* to Macfarland. Exhibit No. 4.

Class No. 28.

Page 113.							
	200	Jno. W. Harris, att'y	David Watts	984 44	885 90	272 85	2,143 19
	201	H. J. Rogers	Smith & Roberts	669 96	603 00	185 72	1,458 68
	202	Jas. White	Jas. White	163 83	147 45	45 41	356 69
p.	203	A. C. Snyder, att'y	Wm. B. Calwell	1,910 20	1,719 00	529 45	4,158 65
	204	J. W. Harris, att'y	" " "	786 16	707 40	217 87	1,711 43
p.	205	A. C. Snyder, att'y	Jas. M. Nickell	100 00	90 00	27 72	217 72
p.	207	A. F. Mathews, att'y	Jno. Beamer	200 00	180 00	55 44	435 44
				$4,814 59	$4,332 75	$1,334 46	$10,481 80

The bonds of this class are dated Aug't 24, 1858, bear interest from October 15th, 1857, are due October 15, 1867, and are secured by the deed of trust of Sept. 3rd, 1858, Exhibit No. 9. This lien attaches to the same real estate conveyed in the deed of trust of Oct. 15, 1857. See said deposition, Exhibits (X) & (Y), and Deed Exhibit No. 9.

This class consists of coupon bonds of five hundred $\frac{00}{100}$ dollars ($500.00), each secured by deed of trust of April 18th, 1861, dated Jan'y 1st, 1860, & due from Jan'y 1st, 1861, to Jan'y 1st, 1865, held or endorsed by certain stockholders. See Exhibit No. 10, also sundry, so-called "individual bonds" of $1,000.00 ea., dated Jan'y 15, 1861, and due two years after date, secured by the same deed.

	No. of bond.	Present owner or representative.	To whom issued.	Principal.	Interest to Jan'y 1st, 1876.	Interest on coupons.	Total.
Due Jan'y 1st, 1861.	9	R. H. Maury	J. Martin, pres't	500 00	450 00		950 00
	10	" "	" "	500 00	450 00		950 00
	11	" "	" "	500 00	450 00		950 00
	12	" "	" "	500 00	450 00		950 00
	13	" "	" "	500 00	450 00		950 00
	14	" "	" "	500 00	450 00		950 00
	15	" "	" "	500 00	450 00		950 00
	23	Jeremiah Morton	" "	500 00	450 00		950 00
	24	" "	" "	500 00	450 00		950 00
	25	" "	" "	500 00	450 00		950 00
	26	" "	" "	500 00	450 00		950 00
	27	" "	" "	500 00	450 00		950 00
	28	" "	" "	500 00	450 00		950 00
c.	16	A. T. Caperton	" "	500 00	450 00		950 00
c.	17	" "	" "	500 00	450 00		950 00
c.	18	" "	" "	500 00	450 00		950 00
c.	19	" "	" "	500 00	450 00		950 00
c.	20	" "	" "	500 00	450 00		950 00
c.	21	" "	" "	500 00	450 00		950 00
c.	22	" "	" "	500 00	450 00		950 00
Due Jan'y 1st, 1862.	83	R. H. Maury	" "	500 00	460 00	33 60	993 60
	72	R. H. Dulaney	" "	500 00	460 00	33 60	993 60

	73	" "	" "	500 00	460 00	33 60	993 60
	74	" "	" "	500 00	460 00	33 60	993 60
	75	" "	" "	500 00	460 00	33 60	993 60
	76	" "	" "	500 00	460 00	33 60	993 60
		Forward		$13,000 00	$11,760 00	$201 60	$24,961 60
	66	W. W. Gordon	" "	500 00	460 00	33 60	993 60
	67	" "	" "	500 00	460 00	33 60	993 60
	68	" "	" "	500 00	460 00	33 60	993 60
	77	" "	" "	500 00	460 00	33 60	993 60
	78	" "	" "	500 00	460 00	33 60	993 60
	79	" "	" "	500 60	460 00	33 60	993 60
	80	" "	" "	500 00	460 00	33 60	993 60
				$16,500 00	$14,980 00	$436 80	$31,916 80
Page 115.							
		Forward		$16,500 00	$14,980 00	$436 80	$31,916 80
Due Jan'y 1st, 1863.	120	R. H. Dulaney	J. Morton, pres't	500 00	470 00	66 00	1,036 00
	121	" "	" "	500 00	470 00	66 00	1,036 00
	122	" "	" "	500 00	470 00	66 00	1,036 00
	123	" "	" "	500 00	470 00	66 00	1,036 00
	124	" "	" "	500 00	470 00	66 00	1,036 00
	125	" "	" "	500 00	470 00	66 00	1,036 00
	113	W. W. Gordon	" "	500 00	470 00	66 00	1,036 00
	114	" "	" "	500 00	470 00	66 00	1,036 00
	115	" "	" "	500 00	470 00	66 00	1,036 00
	132	" "	" "	500 00	470 00	66 00	1,036 00
	133	" "	" "	500 00	470 00	66 00	1,036 00
	134	" "	" "	500 00	470 00	66 00	1,036 00
Due Jan'y 1st, 1864.	172	R. H. Dulaney	J. Morton, pres't	500 00	480 00	95 40	1,075 40
	173	" "	" "	500 00	480 00	95 40	1,075 40
	174	" "	" "	500 00	480 00	95 40	1,075 40
	175	" "	" "	500 00	480 00	95 40	1,075 40
	176	" "	" "	500 00	480 00	95 40	1,075 40
	162	Jeremiah Morton	" "	500 00	480 00	95 40	1,075 40
	167	" "	" "	500 00	480 00	95 40	1,075 40
	168	" "	" "	500 00	480 00	95 40	1,075 40
	161	Th's W. Nunan	" "	500 00	480 00	95 40	1,075 40

Class No. 29.—Continued.

	No. of bond.	Present owner or representative.	To whom issued.	Principal.	Interest to Jan'y 1st, 1876.	Interest on coupons.	Total.
c.	178	A. T. Caperton	" "	500 00	480 00	95 40	1,075 40
c.	179	" "	" "	500 00	480 00	95 40	1,075 40
c.	188	" "	" "	500 00	480 00	95 40	1,075 40
c.	189	" "	" "	500 00	480 00	95 40	1,075 40
c.	210	" "	" "	500 00	480 00	95 40	1,075 40
c.	211	" "	" "	500 00	480 00	95 40	1,075 40
c.	212	" "	" "	500 00	480 00	95 40	1,075 40
c.	213	" "	" "	500 00	480 00	95 40	1,075 40
c.	214	" "	" "	500 00	480 00	95 40	1,075 40
c.	215	" "	" "	500 00	480 00	95 40	1,075 40
c.	229	" "	" "	500 00	480 00	95 40	1,075 40
c.	230	A. T. Caperton	J. Morton, pres't	500 00	480 00	95 40	1,075 40
c.	234	" "	" "	500 00	480 00	95 40	1,075 40
c.	235	" "	" "	500 00	480 00	95 40	1,075 40
c.	236	" "	" "	500 00	480 00	95 40	1,075 40
c.	237	" "	" "	500 00	480 00	95 40	1,075 40
c	238	" "	" "	500 00	480 00	95 40	1,075 40
c.	239	" "	" "	500 00	480 00	95 40	1,075 40
c.	240	" "	" "	500 00	480 00	95 40	1,075 40
				$36,500 00	$34,060 00	$3,900 00	$74,460 00
Page 116.							
		Forward		$36,500 00	$34,060 00	$3,900 00	$74,460 00
Due Jan'y 1st, 1864	185	W. W. Gordon	J. Morton, pres't	500 00	480 00	95 40	1,075 40
—Continued.	186	" "	" "	500 00	480 00	95 40	1,075 40
	187	" "	" "	500 00	480 00	95 40	1,075 40
	163	" "	" "	500 00	480 00	95 40	1,075 40

164	" "	" "	500 00	480 00	95 40	1,075 40
165	" "	" "	500 00	480 00	95 40	1,075 40
166	" "	" "	500 00	480 00	95 40	1,075 40
	Forw'd		$40,000 00	$37,420 00	$4,567 80	$81,987 80
Page 117.						
	Forward		$40,000 00	$37,420 00	$4,567 80	$81,987 80
Due Jan'y 1st, 1885.	207	Jas. L. Strongfellow	J. Morton, pres't	500 00	490 00	122 40	1,112 40
	208	" "	" "	500 00	490 00	122 40	1,112 40
	209	" "	" "	500 00	490 00	122 40	1,112 40
	219	" "	" "	500 00	490 00	122 40	1,112 40
	222	R. H. Dulaney	" "	500 00	490 00	122 40	1,112 40
	223	" "	" "	500 00	490 00	122 40	1,112 40
	224	" "	" "	500 00	490 00	122 40	1,112 40
	225	" "	" "	500 00	490 00	122 40	1,112 40
	226	" "	" "	500 00	490 00	122 40	1,112 40
	227	" "	" "	500 00	490 00	122 40	1,112 40
	216	W. W. Gordon	" "	500 00	490 00	122 40	1,112 40
	217	" "	" "	500 00	490 00	122 40	1,112 40
	218	" "	" "	500 00	490 00	122 40	1,112 40
	231	" "	" "	500 00	490 00	122 40	1,112 40
	232	" "	" "	500 00	490 00	122 40	1,112 40
	233	" "	" "	500 00	490 00	122 40	1,112 40
		Carried down		$48,000 00	$45,260 00	$6,526 20	$99,786 20

This class of debts is secured by a lien which attaches to all of the realty embraced in the deed of October 15th, 1857, and also to the tract of land lying on the turnpike from White Sulphur to Covington, purchased by said company from Hoke, and containing about 2,800 acres. See Exhibit 10.

CLASS No. 29.—Continued.

	No. of bond.	Present owner or representative.	To whom issued.	Principal.	Interest to Jan'y 1st, 1876.	Interest on coupons.	Total.
		Brought down		$48,000 00	$45,260 00	$6,526 20	99,786 10
		W. W. Gordon	41 individual bonds, $1,000 each, issued to order of R. H. Maury, treas., dated Jan'y 15, 1861, and due 2 years after date, with int. from date.	41,000 00	36,797 50		77,797 50
				$89,000 00	$82,057 00	$6,526 20	$177,583 70

CLASS No. 30.

	No. of bond.	Present owner or representative.	To whom issued.	Principal.	Interest to March 1, 1815.	Interest on coupons.	Total.
Page 118. p.	------	A. F. Mathews, att'y	Joseph W. Chunn	10,000 00	9,000 00		19,000 00

Judgment of dist. court of U. S. at Charleston, W. Va., rendered April 23, 1868.

CLASS No. 31.

	No. of bond.	Present owner or representative.	To whom issued.	Principal.	Int. to May 1, 1875.	Interest on coupons.	Total.
p.	------	A. F. Mathews, att'y	M. & T. Mathews	4,980 08	2,091 63	------	7,071 71
p.	------	A. F. Mathews, att'y	Mathews, Mays, Mathews & Co.	7,657 19	3,215 31	------	10,872 50
		Total	------	12,637 27	5,306 94	------	17,944 21

Judgments of circuit court of Greenbrier Co., W. Va., rendered at Sept. term, 1868.

CLASS No. 32.

	No. of bond.	Present owner or representative.	To whom issued.	Principal.	Interest to Oct. 9, 1875.	Costs.	Total.
p.	------	Morris Tasker & Co.	Morris Tasker & Co.	2,120 65	509 00	41 30	2,670 00

Judgment of circuit court of Greenbrier county, W. Va., rendered at October term, 1871.

Debts which are not liens upon the property of the White Sulphur Springs Company, viz., eight per cent. coupon bonds for $500 each, as follows:

	No. of bond.	Present owner or representative.	To whom issued.	Principal.	Interest to Jan'y 1, 1876.	Interest on coupons.	Total.
Dne Jan'y 1st, 1861.	3	A. K. Phillips	J. Morton, pres't	500 00	450 00		950 00
	4	" "	" "	500 00	450 00		950 00
	5	" "	" "	500 00	450 00		950 00
	6	" "	" "	500 00	450 00		950 00
	7	" "	" "	500 00	450 00		950 00
	8	J. F. Swetman	" "	500 00	450 00		950 00
Due Jan'y 1st, 1862.	50	N. H. Massie	" "	500 00	460 00	33 60	993 60
	81	J. F. Swetman	" "	500 00	460 00	33 60	993 60
	51	Jno. W. Harris, att'y	" "	500 00	460 00	33 60	993 60
	56	A. K. Phillips	" "	500 00	460 00	33 60	993 60
	57	" "	" "	500 00	460 00	33 60	993 60
	58	" "	" "	500 00	460 00	33 60	993 60
	59	" "	" "	500 00	460 00	33 60	993 60
	60	" "	" "	500 00	460 00	33 60	993 60
Due Jan'y 1st, 1863.	103	" "	" "	500 00	470 00	66 00	1,036 00
	104	" "	" "	500 00	470 00	66 00	1,036 00
	105	" "	" "	500 00	470 00	66 00	1,036 00
	106	" "	" "	500 00	470 00	66 00	1,036 00
	107	" "	" "	500 00	470 00	66 00	1,036 00
	98	Jno. W. Harris, att'y	" "	500 00	470 00	66 00	1,036 00
	97	N. H. Massie	" "	500 00	470 00	66 00	1,036 00
Due Jan'y 1st, 1864.	147	J. W. Harris, att'y	" "	500 00	480 00	95 40	1,075 40
	148	" " "	" "	500 00	480 00	95 40	1,075 40
	153	A. K. Phillips	" "	500 00	480 00	95 40	1,075 40
	154	" "	" "	500 00	480 00	95 40	1,075 40

	155	" "	" "	500 00	480 00	95 40	1,075 40
	156	" "	" "	500 00	480 00	95 40	1,075 40
	157	" "	" "	500 00	480 00	95 40	1,075 40
	145	N. H. Massie	" "	500 00	480 00	95 40	1,075 40
	177	Jno. S. Lunsford	" "	500 00	480 00	95 40	1,075 40
		Forward		$15,000 00	$13,990 00	$1,589 40	$30,579 40
Page 120.							
		Forward		$15,000 00	$13,990 00	$1,589 40	$30,579 40
Due Jan'y 1st, 1865.	193	Jno. W. Harris, att'y	J. Morton, pres't	500 00	490 00	122 40	1,112 40
	228	J. F. Swetman	" "	500 00	490 00	122 40	1,112 40
	199	A. K. Phillips	" "	500 00	490 00	122 40	1,112 40
	200	" "	" "	500 00	490 00	122 40	1,112 40
	201	" "	" "	500 00	490 00	122 40	1,112 40
	202	" "	" "	500 00	490 00	122 40	1,112 40
	203	" "	" "	500 00	490 00	122 40	1,112 40
	194	N. H. Massie	" "	500 00	490 00	122 40	1,112 40
				$19,000 00	$17,910 00	$2,568 60	$39,478 60
		Other Evidences of Debt not Secured by Liens.					
	Note	Sam'l Hamilton, est.	Sam'l Hamilton	253 39	219 54		472 93
	Due bill.	" "	Pat Mahoney	42 74	37 03		79 77
	Note	B. Vanstarem	Vanstarem & Hamilton	475 68	412 15		887 83
	"	Willington Holly	Willington & Holly	76 00	65 02		141 02
	"	W. W. Scott	G. W. Falconer	181 80	154 77		336 57
	"	D. Watts	D. Watts	123 05	105 82		228 87
	"	"	Josiah Hoke	188 71	162 29		351 00
	Acc.	"	T. J. West & Co.	94 00	86 48		180 48
	"	"	F. M. Snead	5 10	4 46		9 56
	Note	& % Richardson & Co.	Richardson & Co.	1,037 05	899 68		1,936 73
c.	Note	Selden & Miller	Selden & Miller	16,628 70	13,968 10		30,596 80
				$19,106 22	$16,115 34		$35,221 56
		Total of this class		$38,106 22	$34,025 34	$2,568 60	$74,700 16

Page 121 RECAPITULATION.

	Principal.	Interest to ——— ———.	Int. on coupons.	Total.
Class No. 1	100,000 00	36,000 00	6,000 00	142,000 00
" 2	3,802 33	3,421 95	1,054 00	8,278 28
" 3	3,332 27	2,998 95	923 69	7,254 91
" 4	1,643 46	1,478 70	455 44	3,577 60
" 5	9,901 47	8,830 24	2,761 81	21,593 52
" 6	66,453 74	32,278 98	18,420 85	117,153 57
" 7.				
" 8	1,159 53	1,026 00	321 55	2,507 08
" 9	125,118 77	113,145 56	35,191 70	273,456 03
" 10	1,741 64	1,567 20	482 69	3,791 63
" 11	88 93	79 95	39 97	208 85
" 12	339 06	305 10	93 97	738 13
" 13	2,673 22	2,405 70	740 95	5,819 87
" 14	1,065 94	959 25	295 45	2,320 64
" 15	1,142 52	1,028 10	316 64	2,487 26
" 16	1,082 31	973 95	300 00	2,356 26
" 17.				
" 18	550 87	495 75	152 69	1,199 31
" 19	1,048 70	943 80	290 70	2,283 20
" 20	1,740 65	1,566 45	482 46	3,789 56
" 21	1,194 89	1,075 35	331 20	2,601 44
" 22	3,648 20	3,283 35	1,011 26	7,942 81
" 23.				
" 24	2,744 69	2,470 20	760 82	5,975 71
" 25	2,063 24	1,856 91	571 90	4,492 05
" 26.				
" 27	28,321 58	25,487 78	7,849 74	61,659 10
" 28	4,814 59	4,332 75	1,334 46	10,481 80
" 29	89,000 00	82,057 50	6,526 20	177,583 70
" 30	10,000 00	9,000 00	———	19,000 00
" 31	12,637 27	5,306 94	———	17,944 21
" 32	2,120 65	550 30	———	2,670 95
Total of liens	$479,430 52	$345,026 71	$86,710 14	$911,167 37
" 33. Not secured	38,106 22	34,025 34	2,568 60	74,700 16
Total proven	$517,536 74	$379,052 05	$89,278 74	$985,867 53

122 GAY & *als. vs.* WHITE SULPHUR SPRINGS CO. & *als.*

H. M. Mathews, com'r in the above-entitled cause, is requested to report the following state of facts & claim against the White Sulphur Springs Company *et als.* in favor Geo. L. Peyton & Co., who are advised that this claim is a preferred debt against said property & payable before any other debt, charge, or claim upon the White Sulphur Springs property whatever. Previous to the time at which the White Sulphur Springs property was rented or leased after the war by the company there was assessed upon the property taxes to a large amount, to wit, the sum of $——, the collection of which was enjoined by said company upon the ground that the assessment was illegal & erroneous and was made upon the assessment of 1860,

when the property was greatly depreciated in value by the results of the war. *Vide* White Sulphur Springs Co. *vs.* Robinson, sheriff, *et al.*, 3d West Va. R., 542; and Same *vs.* Holley, treasurer, *et al.*, 4th West Va. R., 597. These injunctions were pending when the first lessees of the property took possession of the same. These injunctions were subsequently dissolved & the sheriff & treasurer aforesaid
123 were authorized to proceed with the collection of said taxes. The said White Sulphur Springs Co. having no personal property, & the personal property of Geo. L. Peyton & Co. being on the premises was levied on by the officers, & in order to prevent a sale of their property & its sacrifice & the serious injury of their business, Geo. L. Peyton & Co. were compelled to pay said taxes; they here exhibit with this statement the receipt of the sheriff & collection marked, respectively, A, B, & C, & the assignment of said tax claims by the sheriff of Greenbrier county, by which it will appear that on the 27th day of July, 1871, they paid $2,000.00, & on the 30th day of August, 1871, they paid $1,168.64, & on the 26th of August, 1871, they paid $572.77, which sums they claim, with interest from the date of payment; they are advised that under the law they had the right as lessees to retain out of the rent the amount of these payments, but as the property was in the hands of the receiver they deemed that it was proper to submit the facts to the court with the appliction for an order of court to direct the receiver out of the first funds in his hands to pay said claim, or to direct said Geo. L. Peyton & Co. to retain said amounts out of the rent.

GEO. L. PEYTON & CO.
JAS. F. PATTON, *Att'y.*

124 *Special Report at Request of Geo. L. Peyton & Co.*

In the District Court of the United States for the District of West Virginia.

CHAS. S. GAY and *als.*
vs.
THE WHITE SULPHUR SPRINGS COMPANY and *als.*

Hon. J. J. Jackson, judge of said court:

In accordance with the request hereto attached the commissioner reports that Geo. L. Peyton & Co. paid taxes assessed against the said White Sulphur Springs Company before they became its lessees amounting to thirty-seven hundred and forty-one $\frac{41}{100}$ dollar, ($3,741.41), of which sum two thousand dollars was paid July 27th, 1871, five hundred and seventy-two $\frac{77}{100}$ dollars Aug't 26th, 1871, and eleven hundred and sixty-eight $\frac{64}{100}$ dollars Aug't 30, 1871; that said sums were paid to prevent a sale of the property of the said Geo. L. Peyton & Co. The said tickets for said taxes have been transferred to said G. L. Peyton & Co., and they claim that they are substituted to the rights of the State in the premises, and that said tax tickets are a lien first preferred upon the property of said company, and they ask that the court will so decide, and direct the receiver to pay said several sums, with interest from the respective dates of pay-

ment, out of any rents which may come into his hands or out of the proceeds of the sale of said property when the same shall be sold and before any other debts against the said company shall be paid.

HENRY M. MATHEWS, *Comm'r.*

125 And at another day, to wit, at a district court of the United States for the district of West Virginia, held at Charleston, on Monday, the 20th day of November, 1876:

This day came Henry M. Mathews, commissioner, and tendered his report in this cause, which is ordered to be here filed.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Tuesday, the 21st day of November, 1876:

Special Commissioner H. M. Mathews this day filed his report in this cause, stating that the sum of fifteen thousand five hundred dollars of the rents due from the lessees of the White Sulphur Springs, Geo. L. Peyton & Co., was past due and the same still remains unpaid. On motion of the complainants a rule is awarded against Geo. L. Peyton and Edward McMahan, partners, using the style of Geo. L. Peyton & Co., lessees, and John Echols, H. M. Bell, and R. H. Catlett, securities, returnable here forthwith, to show cause, if any they can, why they shall not severally be fined and attached for the rent due as aforesaid and the lease of the said Geo. L. Peyton & Co. vacated and annulled, and why an execution should not issue against them for said rent due as aforesaid, to be endorsed
126 "No security to be taken," for and on account of their contempt aforesaid in failing and refusing to pay the rent due as aforesaid.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Thursday, the 23rd day of November, 1876:

The rule awarded at a former day of this term having been returned executed on Geo. L. Peyton and Edward McMahan, John Echols, H. M. Bell, and R. H. Catlett, and they still failing to appear and answer, it is adjudged, ordered, and decreed that H. M. Mathews, special commissioner in this cause, do recover from the said Geo. L. Peyton, Edward McMahan, John Echols, H. M. Bell, and R. H. Catlett the sum of $11,038.00, with interest thereon from this day, and the costs of this proceeding, the said sum being the amount of rent still due and unpaid from the lessees, Geo. L. Peyton & Co., of the White Sulphur Springs property and their securities, after deducting the amount allowed to be expended in improvements and repairs; also the sum of $3,000 paid by said lessees on account of said rent to said commissioner, with the interest accrued thereon to this day, and an execution, to be endorsed "No se-
127 curity to be taken," is directed to be issued upon this decree; but by consent of the plaintiff said execution shall not issue for thirty (30) days from this date, which order is entered by consent of parties.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Friday, the 24th day of November, 1876:

In this case it appears the bill was filed at the March rules, 1868, and appeared on the docket of this court at the spring term of that year. The papers disclosed at that time that the property was under a lease from the White Sulphur Springs Company to its present lessees for a period of five years, which was confirmed by the court by consent of the parties then interested in this cause. Since that time various parties have appeared and filed their answer, a receiver been appointed, who has leased the property from time to time under the orders of the court; and from the filing of the bill down to the spring term, 1875, all the orders and decrees entered in this cause were made by consent, and no action of the court was ever invoked looking to a sale of the property until that time. At that term of the court a portion of the creditors holding under the Singleton mortgage (it being the first lien upon the property) moved
128 the court for a decree for sale, which was resisted by the creditors of the second mortgage, as well as all the other subsequent creditors, upon the ground that the commissioner to whom this cause was referred to report upon all the liens and liabilities existing on said property had not fully completed his report, the evidence of debt not having been filed with the commissioner so as to authorize the court to decree finally in reference thereto.

It was further urged that in the then existing monetary condition of the country, when property of this character was so depressed, that if placed upon the market it would sell at such a sacrifice that only the creditors under the Singleton and Erskine mortgages, whose claims amounted to about $300,000.00, would be reached by the fund arising from the sale, while the interests of the great body of the deferred creditors, whose claims amount to upwards of $700,000.00, would most likely be entirely sacrificed. In this condition of the case the court, in the exercise of a sound discretion looking to the interest of the great body of the creditors (the 1st and 2nd mortgage creditors being well secured), determined, under all the circumstances surrounding this case, to refuse to decree a sale at that time, and by consent of all parties a decree was entered
129 leasing the property to the present lessees for the period of two years, which does not expire until the 1st of November, 1877, hoping by that time that the temporary depression of such property would have passed away, and when a sale was made that the property would realize something like a fair price, so that the sale might be confirmed. Since which time no application has been made for a decree to sell the property until this term; and it appearing that this motion is made in the absence of nearly all those interested in the 1st mortgage on this property, as also of the largest creditor, as well as the White Sulphur Springs Company, and that they were under the impression that no such action would be asked at this time, the court, without passing on the merits of the motion, will enter an order continuing this motion, to be heard at an early day in vacation or at the next term, as the parties may elect, that

all those interested may have notice of such application, at which time, if it is the desire of the creditors that a decree for sale be had, the court at this time sees no reason why it should not be granted.

And at another day, to wit, at a district court of the United
130 States for the district of West Virginia, held as aforesaid, on Saturday, the 25th of November, 1876:

On motion of the complainants and for reasons appearing to the court, it is ordered that this cause be remanded to the next term and session of this court, to be held at Wheeling, in this district, on the 17th day of January, 1877, then to be heard and determined.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Friday, the 4th day of May, 1877:

This cause came on this day to be again heard on the petition of Geo. L. Peyton & Co., filed on the 19th day of January, 1877, and the exhibits filed therewith, and was argued by counsel; on consideration whereof, the court being of opinion that the petitioners, Geo. L. Peyton & Co., did pay taxes to the amount of thirty-seven hundred and forty-one $\frac{41}{100}$ dollars ($3,741.41), which were paid by said George L. Peyton & Co., in July and August, 1871, and partly at previous dates in said year, and that they are entitled to receive the same, with interest thereon from the 1st day of September, 1871, out of any funds now or hereafter to come into the hands of Commissioner Mathews, it is ordered that the
131 injunction heretofore awarded by the order of January, 1877, restraining Commissioner Mathews from collecting said principal sum from said Geo. L. Peyton & Co. on account of the rent due by them for the year 1876, be perpetuated, and that in the disbursement of any fund hereafter coming into the hands of said Mathews under orders in this cause he do pay to the said Geo. L. Peyton & Co. the interest which accrued upon said principal sum from the 1st of September, 1871, to the 15th day of September, 1876, or said Mathews shall allow the said Geo. L. Peyton & Co. credit for said interest upon the rent of the White Sulphur Springs for the year 1877.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Saturday, the 5th day of May, 1877:

This cause came on this day to be further heard upon the papers formerly read and upon the report of the commissioner, Henry M. Mathews, accompanied with a report of a topographical survey and plat made under an order in this cause entered on the 19th day of January last, and was argued by counsel; on consideration whereof the court hereby orders the said report, with the survey and
132 plat aforesaid, to be filed among the papers of this cause, to be hereafter considered and acted on; and it appearing to the court that it is now for the interest of all the parties to this suit and of all others interested in the subject involved therein, and there being now no objection, except on the part of the White Sul-

phur Springs Company, that there shall be a sale of the property known as the White Sulphur Springs property and an application of proceeds of said sale among the parties entitled thereto, according to their legal rights and priorities, it is therefore adjudged, ordered, and decreed that Henry M. Mathews, John Echols, William A. Quarrier, A. C. Snyder, W. W. Gordon, and Jasper Y. Moore, any two or more of whom may act, who are hereby appointed commissioners for that purpose, do, commencing on the first Tuesday of August, 1878, and continuing on consecutive days as long as may be necessary, after having given at least six months' notice in some newspaper published in the city of Richmond, Virginia, and in such other newspapers as they may deem judicious of the time, place, and terms of sale, sell on the premises at public auction to the highest bidder or bidders the White Sulphur Springs property as the same is described in the papers of this cause, consisting of the White Sulphur Springs property proper, which comprises about
133 7,000 acres, be the same, however, more or less, and another tract of land, consisting of about 2,800 acres, the last being the land formerly owned by one —— Hoke, requiring of the purchaser or purchasers the payment of ten per cent. of the purchase-money in cash at the time of sale, and for the residue giving a credit of one, two, three, four, and five years, in equal installments, with interest thereon from the day of sale, and requiring good personal security for the payment of the first of said annual installments and retaining the title as further security for all of said installments, or, in lieu of said personal security required of the purchaser or purchasers for the first installment of purchase-money as aforesaid, the said commissioners are authorized to receive from any purchaser or purchasers, as collateral security therefor, any evidences of debts proved in this cause and which it may appear to said commissioners will certainly be paid from the proceeds of said sale and which may belong to said purchaser or purchasers offering the same as collateral security, the just and fair amount of which collaterals shall be determined by said commissioners; and said commissioners are directed to cause said property to be laid off into lots and parcels, with such rights, privileges, and restrictions to be at-
134 tached to each lot or parcel, in such manner as may seem to them most judicious, but the occupants, their families and guests, shall have the privilege to use the water of the White Sulphur Springs for d-inking purposes; and they are farther directed to cause a plat of said lots and parcels to be made for exhibition on the day or days of sale; and said commissioners are hereby directed to proceed as soon as practicable to cause the subdivision hereinbefore mentioned to be made and to report the same to the court at the next term; and in making the sale hereinbefore directed they, or those of them who may act, shall offer the said property at public action in two ways as follows, viz., by offering the same in the lots and parcels into which they may have caused the same to be subdivided and by offering the same as a whole, so as to ascertain by which method they can realize the largest amount of money out of said property; but in making a sale as a whole it is farther or-

dered that the commissioners shall not include in such sale 2,800 acres of land, or thereabouts, known as the Hoke land, but they shall sell the said Hoke land separately, inasmuch as there are creditors having specific liens upon said Hoke land; and the said commissioners are also directed not to sell the lot or parcel of land now held and occupied by Wm. B. Calwell, except subject
135 to the life estate of the said Calwell therein; and it is further ordered that said commissioners shall at the time of offering said lots and parcels they also offer exclusive privilege of bottling, shipping, and selling the mineral waters on said property from the first day of October to the first day of June in each year perpetually, subject to a sale of the property as a whole and subject to such restrictions as the commissioners may deem necessary, and said commissioners are also directed to offer at the same time for sale at public auction the exclusive right to keep one or more bathing-houses for baths of said White Sulphur Springs water, with *with* the undertaking on the part of the purchaser or purchasers of such right to keep said baths open for persons occupying any part of said White Sulphur Springs property at the same rate of compensation.

And said commissioners are authorized to take to their assistance in making the subdivision of said property and the plat aforesaid some competent surveyor, and they are directed to make report of all their proceedings under this order to the court and file with said report the plat aforesaid and all the bonds they may take from the purchasers.

And said commissioners are further directed, out of any
136 cash payments that may be made to them, to pay the costs of advertising and surveyors' and auctioneers' fees, but said commissioners shall not proceed to make sale of said property under this decree until they, or two or more of them or some one for them, shall enter into bond, with good security, to be approved by the judge of this court, in the penalty of one hundred and twenty thousand dollars, payable to the President of the United States and conditioned for the faithful discharge of the duties of their office or trust.

And it is further ordered that the purchaser or purchasers of the said property shall be entitled to the possession thereof on the 1st day of December next after the sale thereof shall be confirmed by the court, or if said sale shall not be confirmed until after the 1st day of December next after said sale, then possession is to be given within thirty days after such confirmation.

And it appearing to the court that since the last hearing the hotel building erected by Geo. L. Peyton & Co. at the depot of the Chesapeake & Ohio Railroad Company at the White Sulphur Springs, in accordance with the terms of a decree rendered in this cause on the 20th day of August, 1875, and the documents referred to therein, has been destroyed by fire, and that by reason thereof a heavy
137 loss has been incurred by said Geo. L. Peyton & Co.; and it also appearing that the term of five years mentioned in said decree will expire on the 1st day of November, 1880, so that less than four years of said term yet remain, and that unless an hotel is

erected @ said depot certain rights and privileges belonging to said White Sulphur Springs Company will be lost; and it also appearing to the court unreasonable to require said Geo. L. Peyton & Co. to rebuild said hotel, to be used by them only for the remainder of said term of five years, even if the court had the right so to require, it is ordered that said Geo. L. Peyton & Co. shall have said term extended till the 1st day of July, 1882, and the said Geo. L. Peyton & Co. shall proceed to erect an hotel at said depot on or near the site of that which has been destroyed on the terms and conditions and in the manner set forth in said decree of August 20, 1875, and the documents referred to therein, except that the hotel so to be erected shall cost not less than ten thousand dollars nor more than forty thousand dollars, and shall be commenced without delay and completed by the 1st day of July, 1878, and hold the same until the 1st day of July, 1882, as aforesaid, instead of the 1st of November, 1880; and it is farther ordered that said commissioners of sale do also sell the
138 rights & privileges of the said White Sulphur Springs Company in and to the hotel to be built under this order by G. L. Peyton & Co., including the right to take said hotel on and after 1 July, 1882, at valuation as herein provided by the decree of the 20 August, 1875, and said documents hereinbefore referred to, and to hold & perpetually enjoy the same, together with the same rights & privileges granted to G. L. Peyton & Co. during their term; and it is farther ordered that the lease of the said White Sulphur Springs property made to Geo. L. Peyton & Co. for the years 1876 & 1877, the said firm being composed of Geo. L. Peyton, H. M. Bell, R. H. Catlett, J. Fred. Effinger, & M. Erskine Miller, shall continue until after the sale of said property, as hereinbefore provided, the said Geo. L. Peyton being present, and for himself & his partners agreeing to accept said lease upon the same terms and conditions as the lease for the two years aforesaid, except that the terms of said lease are modified to this extent and no further, that if the large hotel building at the White Sulphur Springs shall be destroyed by fire, tempest, or other casualty as to render it or the greater part thereof unfit for the uses for which it was built, that then the rent of the property shall be diminished by such an amount as may be fixed upon and determined by arbitrators, one selected by Commissioner Mathews & the other by Geo. L. Peyton & Co.,
139 and their umpire, whose award shall be final & conclusive; and it is further ordered that Commissioner Henry M. Mathews do proceed to take bonds or notes, with good security, as he did under the lease for the two years aforesaid and to collect the same when due and to disburse the money collected as he has heretofore done and make report of his proceedings under this order to the court from time to time. The court doth further order that said H. M. Mathews, commissioner, do make enquiry & report to this court whether any, &, if any, what, fees should be paid out of the fund in this cause to W. W. Gordon & Isaac H. Carrington, attorneys for the White Sulphur Springs Company, and to Wm. A. Quarrier, attorney for plaintiffs, and also whether any, &, if any, what, amount should be paid to A. N. Wellford, president of the White Sulphur

Springs Company, on account of his expenses and salary, and what fees, if any, should be paid out of said fund to any other counsel in this cause.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Monday, the 12th day of November, 1877:

It appearing that no one is invoking the action of the court
140 in this cause at this term, it is ordered that the cause be continued until the next term.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Saturday, the 4th day of May, 1878:

This cause was this day heard upon the papers formerly read, and was argued by counsel; and it appearing to the court that the interest for the year ending October 15th, 1868, on the coupon bonds of the White Sulphur Springs Co. No-. 1, 2, & 3, part of class No. 6, in Commissioner Mathews' report and known as the "Erskine debt" has never been paid, and that the interest on bond No. 4 of same class for the years ending from October 15, 1868, to October 15, 1877, except 4% upon the principal part for the two years ending October 15, 1875, and October 15, 1877, has never been paid, the court is of opinion, and doth order in view of the fact, that the property conveyed to secure said bonds is ample to pay the same principal and interest, as well as all prior liens, and that a sale of the said property has been postponed in the interest of subsequent liens; that the said unpaid interest on said bonds No-. 1, 2, 3, & 4 shall stand on the same footing with the interest on said bonds,
141 which is evidenced by coupons, and shall, like such coupons, bear interest from the dates at which said interest became due until paid; and the court doth further order that the assignees & holders of the interest of said bonds for said years or any part thereof which has been assigned and transferred by the holders of the bonds shall be entitled to and shall have priority over said bonds, coupons, and other interest not transferred, such interest, however, transferred as aforesaid to be entitled to priority according to the dates of its maturity.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Tuesday, the 7th day of May, 1878:

This day George L. Peyton & Co., the lessees of the property of the defendant, The White Sulphur Springs Co., appeared in court and filed their petition praying that certain modifications therein set forth be made in the decree rendered herein on the 5th day of May, 1877, and the court, having duly considered said petition and the decree therein referred to and no objection being made thereto, is of opinion that the modifications of said decree prayed for are reasonable and ought to be made. It is therefore adjudged, ordered,
142 and decreed that the said lessees, Geo. L. Peyton & Co., be allowed further time to build and complete the hotel men-

tioned in said decree until the 1st day of October, 1879, and that the lease of said petitioners of and upon the said hotel when so built be extended to and continued in force till the first day of October, 1884; and it is further adjudged, ordered, and decreed that in case of the interruption of business and travel by reason of strikes and disturbance in the country during the approaching spring season whereby the business of the said petitioners, as the lessees of the property of the said defendant, The White Sulphur Springs Company, shall be damaged and injured, the commissioner already appointed in this case to take accounts, &c., do, if requested by said petitioners, take, state, and report to this court an account of the injury and damages so sustained by them for the action of the court thereon, and that the said decree of May 5th, 1877, herein be modified in all the particulars hereinbefore mentioned, and this cause be continued.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Thurs-
143 day, the 9th day of May, 1878:

Hedgman Slack, former marshal of this judicial district, having presented a fee bill, amounting to one hundred and eight dollars, for services by him rendered in this suit as such marshal, and the same having been seen and inspected by the court, it is ordered that Commissioner Henry M. Mathews do, out of any money in his hands to the credit of this suit, pay to said Slack, said marshal as aforesaid, $108, and take proper voucher therefor.

And at another day, to wit:

In Vacation.

JULY 15TH, 1878.

Upon a notice of Alex'r F. Mathews, A. C. Snyder, and R. F. Dennis to set aside the decree entered in this cause on the 7th day of May, 1878, for reasons set out in said notice:

Before the Honorable John J. Jackson, judge of the district court of the United States for the district of West Virginia, at chambers, in the city of Parkersburg, on this the 15th day of July, 1878:

This day came the said Alex'r F. Mathews, A. C. Snyder, and R. F. Dennis, by their attorneys, and produced their notice of said motion, duly served on George L. Peyton & Co., accompanied by the affidavits of the said Alex'r F. Mathews and A. C. Snyder and
144 of James F. Nickell in support of said motion, as also the White Sulphur Springs Co., by its attorney, and moved the said judge to set aside the said decree in said notice mentioned for the reasons therein contained; and thereupon came the defendants, George L. Peyton & Co., in said notice mentioned, by their attorneys, and resisted said motion, and the matters of law having been in part argued by counsel and considered by the said judge, it is ordered that the further hearing of said motion be, and the same is hereby, adjourned until the second day of August, 1878, at Charleston, in this district, at a court to be then and there held; and it is further ordered that either party may take such depositions as they may be

advised, to be read at the hearing, upon notice, as required by law, duly served upon the parties or their attorneys, and notice served upon either of the parties making this motion or their or his counsel; upon George L. Peyton, for George L. Peyton & Co. or their counsel; upon W. W. Gordon, counsel for White Sulphur Springs Company, and Wm. A. Quarrier, counsel for the plaintiffs in the above-entitled cause, shall be sufficient.

Endorsed: Enter: J. J. Jackson, judge. Teste: Jasper Y. Moore, clerk dist. c't U. S., dist. W. V.

145 And at another day, to wit, at a district court of the United States for the district of West Virginia, held at Charleston, on Wednesday, the 2nd day of August, 1878:

It having been suggested to the court that it had improvidently ordered the payment of compound interest on certain of the debts secured in the Singeton mortgage and the Erskine mortgage, it is adjudged, ordered, and decreed that Henry M. Mathews, commissioner in this cause, do inquire into this matter and report to the next term of the court whether any such compound interest has been paid or ordered to be paid to any of the creditors aforesaid, and this order is directed to be served on said Commissioner Mathews forthwith, and the said commissioner is ordered to give notice of such inquiry to all parties interested therein.

And on the same day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Wednesday, the 2nd day of August, 1878:

The court doth adjudge, order, and decree that the decree rendered in this cause on the 7th day of May, 1878, is modified and set aside in so far as it decrees that Geo. L. Peyton & Co. shall
146 have the right to occupy the building which may be erected at the depot of the Chesapeake and Ohio railroad until the first day of October, 1884, and doth decree that the date of such occupancy shall terminate on the 1st day of July, 1882, as is provided by the decree rendered in this cause on the 5th day of May, 1877.

And at another day, to wit, in the United States district court for the district of West Virginia, at Charleston, September 9th, 1878:

On the petition of John Stewart and D. K. Stewart, this day filed in the above-entitled cause, it is ordered that the said Mrs. Gay and John Echols, trustee, do appear on the first day of the November term, 1878, of this court, at Charleston, West Virginia, and show cause, if any they can, why the prayer of the said petitioners should not be granted, they having been first served with a copy of this order at least ten days before the said first day of said term; and it is further ordered that in the meantime Com'r Mathews be enjoined and restrained from paying out of the rents of the property of the White Sulphur Springs Company accrued, accruing, and to accrue to Mrs. Gay or her assigns, or to John Echols, her trustee, anything

whatever on account of interest upon the bond or bonds of
147 the "Erskine mortgage," in the petition mentioned; and it is further ordered that service of a copy of this order upon Wm. A. Quarrier, of counsel for said —— Gay and John Echols, trustee, shall be deemed equivalent to personal service upon the said parties.

Enter.

J. J. JACKSON,
Judge, &c.

Teste: JASPER Y. MOORE.

And another day, to wit, — clerk's office, district court United States for the district of West Virginia, at Charleston, on the 5th day of October, 1878:

This day Commissioner Henry M. Mathews returned and filed in this cause his report, made in pursuance of a decree entered therein on the 15th May, 1877.

Teste: JASPER Y. MOORE,
Clerk D. C. U. S., D. W. V.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held at Charleston, on Thursday, the 7th day of November, 1878:

This day came John Echols, trustee, &c., by his attorney, and tendered his answer to a petition of John and D. K. Steward heretofore filed in this cause, and moved the court to dissolve the
148 injunction heretofore awarded upon said petition.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Saturday, the 9th day of November, 1878:

It appearing to the court that the bill of N. T. Pate & Co. for painting the roof of the hotel at the White Sulphur Springs, amounting to one thousand ninety-five dollars and four cents ($1,095.04), has been approved by the commissioner, Henry M. Mathews, it is hereby adjudged and ordered that the same is approved by this court, and that the amount thereof be paid, out of any funds arising out of the rents of said White Sulphur Springs for the year 1879, hereafter to be received and distributed under the former order of this court.

And on the same day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Saturday, the 9th day of November, 1878:

It is hereby ordered that Geo. L. Peyton & Co., the lessees of the property of the White Sulphur Springs Company for the year from November 1st, 1877, to November 1st, 1878, do produce before
149 Commissioner Mathews their vouchers for the settlement of the account of permanent improvements heretofore authorized to be made by said Peyton & Co. and to be paid for out of the rents of the property, said account to be taken, stated, and reported by said Commissioner Mathews, after giving notice at least

twenty days of the time and place of taking said account to said Peyton & Co.

And on the same day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Saturday, the 9th day of November, 1878:

This day the commissioners appointed under a former decree in this cause to make sale of the property in the bill and proceedings mentioned made their report, which is ordered to be filed, and it appearing from said report that no sales was made, it is ordered that the said commissioners do again advertise in such manner as they may deem best the property for sale, to take place on the premises, in pursuance of the provisions of the decree heretofore entered in this cause and by consent of the parties to this cause, who hereby assent to this order in open court; it is further ordered that the decree heretofore entered in this cause directing how the sale of said property should be made shall be modified so as to authorize
150 and permit the commissioners to sell said property either at private or public sale and as a whole or in parcels, or any of the privileges mentioned in the decree of sale in this cause heretofore made, as may seem to the commissioners best for the interest of the creditors to this cause, and to report to the court their action in regard to the sale of the whole lands or of any parcel or parcels thereof or of any of said privileges for approval and confirmation, which action may be approved and the sale confirmed, either in term time or vacation, after notice to counsel of such action being asked, and in all other respects the decrees heretofore entered shall stand as they now are; and the question having arisen as to the rights of the lessees to hold over as a matter of right until a sale of the property be made, it is ordered, by like consent of parties, that the lessees hold the property for the ensuing year on the terms of their late lease of the property, and as to their right to hold longer the court postpones the adjudication of the question to a future term of this court, but this order as to the right of the lessees to hold over is not in any manner to affect their legal rights, whatever they may be, under the former decree of this court, they hereby giving notice that they do not assent to that part of the decree of this date.

151 And at another day, to wit, at a district court of the United States for the district of West Virginia, held at Charleston, on Tuesday, the 26th day of November, 1878:

H. L. Wigand having produced to the court an attested copy of the order made in this cause on the 9th day of November, during the present term, allowing to N. T. Pate & Co. the sum of one thousand and ninety-five dollars and four cents ($1,095.04), for painting, &c., as stated in said order, with an assignment endorsed on said attested copy in the words and figures following, to wit:

"RICHMOND, VIRGINIA, *November 19th*, 1878.

For value received we hereby assign to H. L. Wigand the amount of one thousand and ninety-five dollars and four cents ($1,095.04),

as stated in the within order, and give him authority to collect the same in accordance with its provisions, as fully as we could do but for this assignment.

(Signed) N. T. PATE & CO.

Witness:

JAMES E. GODDIN."

And, on motion of the said H. L. Wigand, it is ordered that said sum be paid under the provisions of the said order allowing the same only as the production of the attested copy and assignment aforesaid.

152 And at another day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Thursday, the 5th day of June, 1879:

This day George L. Peyton & Co. presented their accounts for improvements made upon the White Sulphur Springs property during the years 1877 and 1878, amounting to the sum of $7,090.59, which, having been referred to Commissioners Echols, Moore, and Quarrier, who returned a written report, stating said accounts were verified by the vouchers filed therewith, and said accounts being further verified by the affidavit of Noyes Rand appended to said accounts, and there being no exceptions to said accounts, it is adjudged, ordered, and decreed that said accounts be, and the same are hereby, approved and confirmed; and it is further ordered that Commissioner Henry M. Mathews do allow the said George L. Peyton & Co. credit for said sum of $7,090.59 on the rent due from said George L. Peyton & Co. on said White Sulphur Springs property.

And on the same day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on
153 Thursday, the 5th day of June, 1879:

On the application of R. H. Mason it is adjudged, ordered, and decreed that the commissioners heretofore appointed to make sale of the White Sulphur Springs property have authority sell to the Right Reverend George W. Peterkin, and such persons as he shall associate with him, a lot of land situate upon the same, of the said White Sulphur Springs, to contain one-half acre, and to front on the turnpike road twenty-five yards, and to extend toward Florida Row, and to be laid off near the point where Florida Row approaches said turnpike, said lot to be surveyed and laid off by said commissioners and a plat of the same to be filed with the deed hereafter directed, at the price of one thousand dollars, one-fourth of said sum to be in cash and the residue, in four equal annual instalments, bearing interest from date; and as soon as the said Peterkin, or some one for him, shall have paid the cash payment aforesaid and executed bonds with security for the deferred payments, as is herein provided, Commissioner William A. Quarrier is hereby directed to make, execute, and deliver a deed to such persons as said Peterkin shall direct, upon trust that they shall hold said lot for the
154 use of that body of Christians known as the Protestant Episcopal Church in the United States of America and that branch

of said church that is under the charge and government of the diocese of West Virginia, for the purpose of erecting on said lot a church and parsonage; and the said commissioner is directed to retain a lien for the deferred instalments of purchase-money, and in said deed said commissioner is directed not only to convey to the purchaser the title of said White Sulphur Springs Company, but to release the liens of all the creditors who have liens upon the same.

And at another day, to wit, in the district court of the United States for the district of West Virginia, at Charleston, October 13th, 1879, in vacation:

This day Special Commissioners Wm. A. Quarrier, W. W. Gordon, Henry M. Mathews, A. C. Snyder, and Jasper Y. Moore returned their report of sale made by them of the White Sulphur Springs property under decrees rendered in this cause, which report is filed; and on the same day W. A. Stewart, one of the creditors of the White Sulphur Springs Company, tendered exceptions in writing to said report, bearing date October 2nd, 1879, which exceptions are
155 filed; and on the same day Samuel Price, Esq., attorney for the children of Mrs. E. E. Crockett, Sam'l Price, their trustee, and William A. Stewart, creditor of said company, tendered exceptions in writing to said report of sale, dated October 9th, 1877, which exceptions are also filed.

Teste: JASPER Y. MOORE,
Clerk Dist. C't U. S., Dist. W. Va.

The report of sale referred to in the foregoing order is in the words and figures following, to wit:

To the Hon. John J. Jackson, judge of the district court of the United States for the district of West Virginia, sitting at Charleston, in said district:

The undersigned, commissioners appointed by your honor and directed under decrees made in the suit of Charles S. Gay & others *v.* The White Sulphur Springs Company and others, pending in said court, to make sale of the lands and property of the def't, the White Sulphur Springs Company, in the bill and proceedings mentioned, submit the following report:

That pursuant to the provisions of the decree of May the 5th, 1877, they caused the tract of 7,000 acres of land upon which the sulphur springs and all the improvements are located to be
156 divided and laid off into four parcels or subdivisions, exclusive of the lawn, the sulphur spring, the brick hotel, and the privileges of the use of the mineral waters for bottling and bathing purposes, and had a plat and report made on which the boundaries of said subdivisions are designated, as will appear from said plat or map and report filed and made part of this report.

That they prepared an advertisement for the sale of said property, designating said subdivisions and giving the manner and terms of sale, and had said advertisement published in "The State," a newspaper published in Richmond, Virginia, and by handbills for six

months preceeding the sale; copies of said advertisement and hand-bill are here made parts of this report.

That they also had notices of said sale published for the same time in the following newspapers, viz:

"The Sun," published in Baltimore, Md.
The "Courier-Journal," published in Louisville, Ky.
The "Wall Street Journal," published in New York.
The "Journal of Commerce," published in New York.
"The Gr. Independent," published in Lewisburg, W. Va.

That they executed and filed with the clerk of said court bond with security, as required by said decree.

157 That, having offered said property for sale on the day and in the manner required by said decree and in pursuance of said advertisement, and having failed to make a sale, as stated in their report filed in said cause at the November term, 1878, they then, as directed by the decree of November 9th, 1878, again advertised said property for sale at public auction on the 7th day of August, 1879, by notices duly published in the six newspapers above named, and also stated that they were authorized to sell said property at private sale as a whole or in parcels at any time before said 7th day of August, 1879, and having failed to make any private sale they, on the 7th day of August, 1879, pursuant to said last-mentioned advertisement, copies of which are herewith filed, offered the said property at public auction, on the premises, — the manner following:

They first offered the said 7,000 acres, with the spring and all the improvements thereon, as a whole, and receiving no bid on that day the sale was adjourned to the following day, when it was again offered as a whole, and the highest offer made for it was $300,000, bid by Alex. F. Mathews, of Lewisburg, W. Va.; that they then adjourned the sale to the next day, the 9th day of August, 1879, at which time they offered the property in parcels—that is, they

158 offered separately each of the four subdivisions designated by the plat and report hereinbefore named, and also the brick hotel and the bottling and bathing privileges of the mineral waters, as required by the decree of May 5, 1877, and the highest offer made for the brick hotel was $80,000, by J. L. Carrington, of Richmond, Virginia; the highest offer made for the privilege of erecting bathing houses was $20,000, by Randolph Stalnaker, of Wheeling, W. Va., and the highest offer made for subdivision No. 4 was $35,000, by George L. Peyton; that no offer was made for either of the subdivisions Nos. 1, 2, and 3, nor for the privilege of bottling the mineral waters; that then, on the same day, they again offered said property as a whole, crying it at the bid made by Alex. F. Mathews aforesaid, and no one offering any more the same was cried off to said Mathews at his bid of $300,000; that the cash payment of $30,000 has been made by said Mathews, and for the balance of $270,000 he has executed his five bonds of $54,000 each, dated on the said 9th day of August, 1879, and payable, respectively, at one, two, three, four, and five years, with interest from date; for the first of said bonds security

has been taken, as required by the decree. The said bonds
159 are herewith returned, and the cash payment is held by the commissioners subject to the order of the court.

That at the time said property was offered for sale the commissioners announced that by virtue of the provisions of the decrees and discretion vested in them thereby they would sell it, and they did sell it, subject to the following exceptions and reservations, viz., reserving the life estate of Wm. B. Calwell in the lot of two acres upon which he now resides, the lease of Geo. L. Peyton & Co. on the premises at the depot where the "Peyton House" stood, the family cemetery of the former proprietors of about one-fourth acre, and excepting the lot laid off for the Episcopal church as defined on the plat filed as aforesaid and the lot conveyed by the White Sulphur Springs Co. to Jeremiah Morton and others for the Methodist church by deed dated October 29, 1859, a copy of which deed is herewith filed as part of this report.

That for the tract of 2,800 acres of land near the Ches. & O. R'y in Alleghany county, Virginia, no offer was received and no sale of it *it* was therefore made.

The expenses attending the sales aforesaid are as follows, viz:

For Advertising the Two Sales.

	The Richmond "State," 2 w'ks	$330 40
160	" "Wall Street Journal," 2 w'ks	208 00
	" Baltimore "Sun," " "	161 40
The	"Greenbrier Independent," " "	123 00
"	Same for handbills	19 00
"	"Courier-Journal"	
"	"Journal of Commerce"	
J. W. Dyche, auctioneer's fee		100 00
W. Proctor Smith, engineer & surveyor		

In addition to the above the am't allowed as commissions to the commissioners must be provided for.

The commissioners deem it proper to say that unusual and extraordinary efforts have been made by them to sell this property at the highest price within their power; not only has it been offered two successive years, but the sale has been postponed and the bidding reopened day after day with the hope and upon the suggestion that combinations might be formed amongst creditors or between other parties with a view to the purchase. The largest creditors have been personally present, and every suggestion made by them to facilitate the sale has been regarded and two or more of the commissioners have visited the cities of Baltimore and New York,
and in the latter place especially have personally called the
161 attention of large real-estate brokers to the property and endeavored to interest them in procuring bidders amongst capitalists and hotel-keepers in the Northern cities. The commissioners having exhausted all the means within their powers to effect an advantageous sale, they do not see that any further effort on their part

would be attended with more favorable results, and they therefore respectfully recommend a confirmation of the sale, as herein reported, unless a better bid or bids be offered before this report is acted upon by the court.

All of which is respectfully submitted.

WM. A. QUARRIER,
W. W. GORDON,
HENRY M. MATHEWS,
A. C. SNYDER,
JASPER Y. MOORE,
Commissioners.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held at Charleston, on Wednesday, the 5th day of November, 1879:

Wm. A. Stuart this day presented a notice in this suit against Geo. L. Peyton & Co. returnable here to-day, and service of
162 said notice having been duly proved said notice is docketed.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Tuesday, the 18th of November, 1879:

William Gibboney this day, by counsel, T. L. Brown, tendered his petition in the above cause & moved the court to file the same, which the court directs to be filed, and that the matters in said petition be referred to Master Com'r H. M. Mathews to examine and make report thereon.

And on the same day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Tuesday, the 18th day of November, 1879:

Ordered that Commissioner H. M. Mathews, out of the rents coming to his hands in this cause, pay to the clerk of this court his taxed costs in the cause accruing since last payment on his fees.

163 And at another day, to wit, at a district court of the United States for the district of West Virginia, held as last aforesaid, on Wednesday, the 19th day of November, 1879:

Due notice having been given by the plaintiffs to George L. Peyton & Co. of a motion to be made to vacate and set aside an order entered in this cause on the 5th day of June, 1879, approving certain accounts of theirs, the balance on which amounted to $7,090.59 cts., and the court not being advised what decree to render when the motion — this day made for the purpose aforesaid, doth adjudge, order, and decree that Commissioner H. M. Mathews take, state, and settle an account of the matters arising out of or connected with said motion, and that he specially ascertain and state the items of the account for 1876, the balance on which seems to have been carried forward in the account for 1877, filed among the papers, & which amounts to $6,940.15 cts., and the reasons, if any, why the court should allow said George L. Peyton & Co. credit for said balance, and said master will proceed to execute this decree after due notice

to the parties of the time and place of his appointment for the purpose, and have said account and his report thereof ready for
164 hearing by the judge of this court in Charleston, on the 19th day of December, 1879, at such place as said judge shall designate, reasonable notice of which will be given to the counsel of the parties.

And on the same day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on the day last aforesaid:

It appearing from the report of the commissioners of sale filed in this cause on the 13th of October, 1879, that heavy expenses have been incurred by said commissioners for costs of advertising and auctioneer's services, it is ordered and decreed that H. M. Mathews, the receiver of the court in this cause, do pay the bills for advertising and auctioneer's services referred to in said report out of any fund which may come into — hands from this property.

And on the same day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on the day last aforesaid:

This cause came on further to be heard on this day of the
165 term, upon the report of Master Commissioner H. M. Mathews, in respect to the fees of counsel filed Oct. 5th, 1878, and the depositions filed therewith, marked A, B, C, and exceptions to said report and depositions taken by Wm. A. Stuart and Margaret L. Gay, and was argued by counsel. Upon consideration thereof, the court overruling the exceptions to said report so far as the same may be construed as applying to the fee allowed by the master to William A. Quarrier of five thousand dollars for his services as counsel in the conduct and management of this cause, doth adjudge, order, and decree that a fee of five thousand dollars be allowed to the said William A. Quarrier as compensation for his services as counsel as aforesaid in this cause, and that the same be charged upon the fund under the control of this court and be paid out of the same when realized; and in respect to the other matters contained in said report, and the depositions filed therewith, the court doth sustain the exceptions to said depositions and doth set aside said report except as aforesaid.

And it is further adjudged, ordered, and decreed that Master Commissioner H. M. Mathews, in pursuance of the decretal order
166 herein of the 15th of May, 1877, do inquire and report to this court whether any, and, if any, what fees, in addition to that hereinbefore allowed to said Wm. A. Quarrier, should be paid out of the fund in this cause to counsel connected therewith; whether any — what amount should be paid to A. N. Wallford, president of the White Sulphur Springs Company, and whether any; and he will proceed to act under this decree and to take the testimony *de novo* in connection with the matters of inquiry aforesaid, after reasonable notice to the parties of the time and place of his appointment for extending this decree and taking the testimony

aforesaid, and he will have his report and the depositions and documentary evidence, if any, accompanying the same, ready for the hearing of the questions arising thereon, in chambers, on the 19th day of December, 1879, at such place as the judge of this court shall designate, of which reasonable notice will be given to the counsel of the parties; and the commissioners of sale, whose report was filed on the 13th of October, 1879, will report to the court, at the same time and place, what additional compensation, if any, should be allowed to W. Proctor Smith for his services as surveyor
167 acting under these orders.

And on the same day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on the day last aforesaid:

This day Margaret L. Gay and William A. Stuart, by their counsel, tendered their exceptions to the report of the commissioners of sale filed on the 13th of October, 1879, which are ordered to be filed; and thereupon the cause came on to be heard further at this term and was argued by counsel; upon consideration thereof and of the matters stated in said exceptions and of the statement made in open court by the purchaser, Alexander F. Mathews, to the effect that, whilst he is willing and prefers to have said sale confirmed, he is unwilling to insist upon such confirmation in opposition to the wishes of the creditors, the court being of opinion that said sale should not be confirmed, it is therefore adjudged, ordered, and decreed that the sale made by said commissioners to said Alexander F. Mathews be, and the same is hereby, set aside and annulled, and said commissioners are directed to surrender to said purchaser the bonds executed by him and to repay to him the cash paid in
168 pursuance of the decree of sale; and it is further adjudged, ordered, and decreed that the commissioners of sale do again proceed to offer said property for sale upon the terms and in pursuance of the provisions of the decree rendered herein on the 5th day of May, 1877, as modified by the decree of the 9th day of November, 1878, except that, in case a sale of said property be not effected privately on or before the 31st day of March, 1880, said commissioners do, after having given notice of the time, place, and terms of sale for at least two months, as prescribed in said first-named decree, commence such sale on the premises on Wednesday, the 31st day of March, 1880, and continue the same on consecutive days as long as may be necessary; and said commissioners will report any sale they may effect under this decree for confirmation by this court at its next term, and in any event report their proceedings in the premises.

And the court, being of opinion that the sixth exception filed to the report of sale by the plaintiff, Margaret L. Gay, was well taken, would, in order to avoid objection to any future sale on this ground, direct that the 200 acres of land referred to in said exception, which is covered by both of the deeds executed to secure the Single-
169 ton and the Erskine bonds, be sold separately, but it being conceded by all parties, by their counsel, in open court that

said 200-acre tract embraces the White Sulphur Springs and the valuable improvements of the White Sulphur Springs property, and that in any sale of the entire property which could be confirmed by the court the value of the sale money of said 200-acre tract must exceed the amount necessary to discharge the Singleton trust deed, it is thereupon and by consent of parties adjudged, ordered, and decreed that said commissioners proceed to sell said property as heretofore directed and as if the 7,000 acres, more or less, described in said decree of May 5th, 1877, as constituting "The White Sulphur Springs property proper," were covered by the Singleton trust deed, the tract known as the Hoke tract, containing 2,800 acres, more or less, to be sold separately, as heretofore directed; but this decree shall be without prejudice to the right of those claiming under the Erskine mortgage, if any they have, to insist (if need be to protect them from loss) on a sale of the 750 acres covered by the Singleton trust deed, but not embraced by this decree of sale; but the said commissioners in making any sale under this decree are di-
170 rected to exempt therefrom the lot of land heretofore sold to the Right Reverend George W. Peterkin under a former decree in this cause.

And said commissioners are further directed to except and reserve from such sale the life estate of Wm. B. Calwell in the two acres of land upon which he now resides; the lease of George L. Peyton & Co. on the premises at the depot where the Peyton House stood; the family cemetery of the former proprietor, containing about one-fourth of an acre, and the lot heretofore conveyed by the White Sulphur Company to Jeremiah Morton and others for the Methodist church by deed dated October 29, 1859, a copy of which is filed among the papers in this cause, and also the house and improvements on the lot occupied by E. F. Wicker and put thereon by said Wicker under an agreement executed by Wm. B. Calwell, president, &c., on the 10th day of January, 1874, as shown by a contract in writing, marked "W. B. C.," herewith filed, the privilege being reserved to said Wicker to remove said house & improvements from said lot in case there should be a sale of the premises as aforesaid.

171 And at another day, to wit, at a district court of the United States for the district of West Virginia, at Charleston, December 20th, 1879, in vacation:

In pursuance of the decretal orders in this cause entered in term on the 19th day of November, 1879, in respect to the improvement accounts of George L. Peyton & Co. and in respect to the claims of W. W. Gordon, J. H. Carrington, and James F. Patton, administrator of Allen T. Caperton, deceased, for compensation of counsel, reported against the fund under the control of this court, and of A. N. Wellford, for compensation as president of the White Sulphur Springs Company, this cause came on to be heard before this court, in chambers, in the city of Parkersburg, on Friday, the 19th day of December, 1879, and by adjournment on the 20th day of December, 1879, upon a report made by Master Commissioner Mathews in respect to the matter of the improvement accounts, and upon exami-

nation of witnesses in respect to the matter of fees and compensation aforesaid, no report thereon having as yet been returned by the master, the same not having been closed by consent of parties, and was argued by counsel; upon consideration thereof and for reasons satisfactory to the court it is ordered and decreed that the
172 time for the hearing of said matter be postponed till the 17th day of February, 1880, in the chambers of the judge of this court, at Parkersburg, or at any other time and place the judge of this court may designate, reasonable notice of such change, if made, to be given to the counsel of the parties interested, and that Master Commissioner Mathews, to whom is recommitted his said report as to the improvement accounts, proceed, after due and reasonable notice to the parties interested and their counsel, to execute the decretal orders aforesaid as provided for therein, and that he make and include in his report a full and complete statement of the improvement accounts from the year 1875 to the year 1879, both inclusive; and it is further ordered that the parties, as they may be advised, may take additional testimony in the cause, either before the master at the time and place of his appointment or otherwise, upon reasonable notice to the adverse parties interested and their counsel, which testimony shall be returned by the master with the reports required to be made by him as aforesaid.

Endorsed: "Jackson, judge. Dec. 20th, 1879." Teste: Jasper Y. Moore, clerk dist. c't U. S., D. W. Va.

173 And at another day, to wit, in the district court of the United States for the district of West Virginia, Charleston, March 16th, 1880:

This cause came on this 5th day of March, 1880, to be again heard by consent of all the parties interested in the questions arising upon the motion heretofore made by counsel of Margaret L. Gay & others to set aside the order made in this cause on the 5th day of June, 1879, on the papers formerly read and on the reports of Commissioner Mathews filed, one on the 3d and the other on the 4th day of March, 1880, and the exceptions thereto by the said Gay & others, and the examination of a witness filed with said reports, and was argued by counsel; on consideration whereof the court, being of opinion that the said reports and evidence are insufficient to enable the court to decide said motion, doth recommit the said reports, and the exceptions thereto, to the same commissioner, with instructions to examine said exceptions and make report thereon; and the court doth further order that said commissioner proceed to inquire and report to the court, 1st, the amount of expenditures upon improvements on the property of the White Sulphur Springs Com-
174 pany made by Geo. L. Peyton & Co. over and above the sums heretofore allowed them since the 1st day of January, 1875; 2nd, what was the character of said improvements, and whether they were necessary and proper for the preservation and use of the said property, and whether they added to the value of said property and were of benefit to the creditors, and what sum, if any, should be

allowed to said George L. Peyton & Co. for and on account of said expenditures, and make report thereof to this court as speedily as possible; and said commissioner is directed to give ten days' notice of the time and place for making said examination and enquiries.

And it is further ordered that the parties interested may take such evidence as they may deem proper upon reasonable notice to the other.

"March 5th, 1880.

"J. J. JACKSON, *Judge.*"

To Jasper Y. Moore, clerk U. S. dist. c't, D. W. Va.:

You will enter above decree.

"J. J. JACKSON, *Judge.*"

175 And at another day, to wit, at a district court of the United States for the district of West Virginia, held at Charleston, on Tuesday, the 4th day of May, 1880:

This cause this day came on to be further heard upon the papers formerly read and upon the report of Jasper Y. Moore, John Echols, Wm. A. Quarrier, A. C. Snyder, & Henry M. Mathews, commissioners of sale dated 31st day of March, 1880, and this day filed, to which report there is no exception, and was argued by counsel; on consideration whereof the court, approving the action of said commissioners and the sales made by them to William A. Stuart of the White Sulphur Springs property, subject to the exceptions and reservations set forth in the decree of 19th November, 1879, at the price of three hundred and forty thousand dollars, and of the Hoke tract of land at the price of five hundred dollars, as set forth in their said report, doth ratify and confirm said sales and said report, and doth order and decree that the purchaser, William A. Stuart, be at once put in full possession and use of said property, the title thereto being retained by the court as security for the payment of the purchase-money; and the court doth further order that the commissioners of sale proceed to collect from the said William A.

176 Stuart the cash payment of ten per cent. upon the aggregate of purchase-money and apply so much thereof as may be necessary to the payment of the costs and expenses of this suit, including their own compensation as commissioners of sale, which compensation the court hereby fixes at the sum of six thousand dollars, which is to be equally divided among all of the commissioners appointed by the decree of 5th May, 1877, all of them, in fact, having acted and rendered full service as such commissioners, although from accidental circumstances the names of all are not signed to the report which is confirmed by this decree, and including the further sum of two hundred and fifty dollars to be paid to Commissioner H. M. Mathews and the further sum of two hundred & fifty dollars to be paid to Commissioner Jasper Y. Moore for the expenses, &c., of the trip made by them to New York with a view of effecting a sale, and any surplus that may remain after the payment of said costs and expenses they shall apply toward the satisfaction of the Singleton mortgage, and this court will hereafter make such orders as may be

proper for the collection of the deferred installments of the
177 purchase-money and the distribution of the same among the parties to this suit, according to their respective rights and interests.

The court doth reserve for further consideration whether any, and, if any, what compensation shall be allowed to the counsel of the White Sulphur Springs Company.

The report of sale referred to in the foregoing order is in the words and figures following, to wit:

"C. S. GAY & Others
vs.
THE WHITE SULPHUR SPRINGS COMPANY & Others. } In Chancery.

To the Honorable John J. Jackson, judge of the district court of the United States for the district of West Virginia, sitting at Charleston:

The undersigned, special commissioners appointed to make sale of the real estate and property described in the bill and known as the White Sulphur Springs property, beg leave to respectfully report:

That pursuant to the decrees rendered in this cause they made diligent effort to make sale of said real estate by way of private
178 sale, but failed to accomplish the purpose; that pursuant to said decrees they caused advertisement to be published in the mode and manner therein directed for a public sale, directed by the court to be had on the premises on the 31st day of March, 1880; that on that day they offered the same in the mode and manner therein directed, first offering the same in parcels and then as a whole; they failed to receive any offer for the parcels or privileges separately, and Wm. A. Stuart became the purchaser of all the property described in the decree of the 19th of November, 1879, subject to all the exceptions & reservations made in said decree, and excepting also the property known as the Hoke land, situated in Allegheny county, Virginia, he being the highest bidder therefor, at the price and sum of three hundred and forty thousand dollars ($340,000.00), and at the same time and place the said Stuart became the purchaser of the aforesaid Hoke land, situated as aforesaid, he being the highest bidder therefor, at the price and sum of five hundred dollars ($500); and the purchaser, William A. Stuart, having exhibited to the commissioners satisfactory evidence that he is the owner of the entire Singleton mortgage, reported as the first lien in this cause, except two bonds each for the sum of five
179 thousand dollars, and belonging, respectively, to Alex. F. Mathews & Dr. A. M. Wellford, the commissioners did not deem it necessary to exact from the purchaser the entire ten per cent., as required by the decree of sale, the said purchaser having announced his willingness and the commissioners being satisfied of his ability to pay so much of said cash instalment as shall be necessary to discharge the taxed costs of the suit, the costs of sale, and the amounts due, respectively, to said Mathews & Wellford.

The commissioners have taken from the purchaser his five bonds, each for the sum of sixty-one thousand two hundred and ninety dollars ($61,290), payable, respectively, at one, two, three, four, and five years, bearing six per cent. interest from the day of sale; and on the bond due one year after date they have taken George L. Peyton as the security, the decree requiring no security on the other deferred instalments. By an arrangement with the purchaser the residue of the cash instalment — not needed to pay costs of suit and sale, and after paying the creditors, Mathews and Wellford, their proportion of the same is to be credited *pro rata* upon the bonds secured in the Singleton mortgage held and owned by the purchaser.

180 The commissioners at this time are unable to report the costs of sale from the fact that they do not know what commission the court intends to allow, nor are they able to ascertain the costs of suit until certain questions now pending are decided by the court. They will file a supplemental report containing the requisite information on this subject during the present term of the court.

The court is aware of the long-continued and diligent efforts made by the commissioners to effect a sale of this property. Ever since their appointment they have made diligent private efforts to sell the same. The property has been largely, extensively, and expensively advertised for sale. It has been offered three times at public auction. The present bid of W. A. Stuart is the largest and best bid that has been obtained. Every effort has been made to induce the public and the creditors to offer a larger sum, but without success.

The improvements upon the property, notwithstanding the wise efforts of the court to keep them in repair, are steadily deteriorating. In their present condition it is impossible for any lessee to entertain guests with comfort or to give satisfaction to the visiting public.

181 The commissioners are satisfied that if the property is not put in such repair as only an owner would be willing to place it that its value will steadily decrease and be permanently injured. They therefore respectfully recommend that the sale herein reported be approved and confirmed.

March 31st, 1880.

JASPER Y. MOORE.
JOHN ECHOLS.
WM. A. QUARRIER.
A. C. SNYDER.
HENRY M. MATHEWS."

And at another day, to wit, at a district court of the United States for the district of West Virginia, held at Charleston, on Friday, the 7th day of May, 1880:

It is ordered that J. M. McWhorter, who is hereby appointed a special com'r for the purpose, do execute and deliver to David Watts, Joel McPherson, Wm. B. Calwell, John F. Garing, and Samuel B. Gardner, as trustees of the Methodist Episcopal Church at the White Sulphur Springs, in Greenbrier county, West Virginia, a deed for

the lot and church situate thereon, situate on the White Sulphur Springs lot in this suit mentioned, being the same lot that is mentioned and described in the decree entered in this cause on the 19th day of November, 1879, and excepted from the order of sale
182 in said decree, and excepted and reserved from the sale made on the 31st day of March, 1880, for the use of the congregation of said church at said White Sulphur Springs station.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held at Charleston, on Monday, the 10th day of May, 1880:

In the matter of Geo. L. Peyton & Co.'s improvement account and of the motion of W. A. Stuart, &c., to set aside the order entered in this cause in respect to said account on the 2nd day of June, 1879.

This cause came on this day to be again heard upon the matters aforesaid on the papers formerly read and the report of Com'r Mathews made in pursuance of the order of the 5th of March, 1880, this day filed, and the depositions of witnesses accompanying said report, and was argued by counsel (it having been understood and agreed by the parties interested, by counsel, that the court should act upon said report as soon as it should be filed without waiting the usual time); on consideration whereof, the court, approving said report, doth confirm the same, and it being of opinion that
183 it is just and equitable that the said Geo. L. Peyton & Co. should be reimbursed for all their expenditures in improvements put upon the White Sulphur Springs property that were necessary and proper for the preservation and the permanent improvement thereof or necessary to keep it in such a state of preservation as to prevent a deterioration in the property itself or from affecting injuriously the sale of the same, and it appearing from said report of Comm'r Mathews and depositions therewith filed that the whole of the sum of $7,090.59, allowed said Geo. L. Peyton & Co. by the order of the 2nd of June, 1879, was expended for improvements of the property of the character above mentioned, except as to the sum of $100.00, as near as the court can approximate it, it is ordered and decreed that the said motion of W. A. Stuart, &c., to set aside the said order of the 2d of June, 1879, be overruled, and that said order be, and the same is hereby, ratified and confirmed, except as to the sum of $100.00 as aforesaid; and, it being admitted by said Geo. L. Peyton & Co., by counsel, that they have been credited with the whole of said sum of $7,090.59, as directed by said order of the 2d of June, 1879, it is further ordered that the said Geo. L. Peyton & Co. do pay to Com'r Henry M. Mathews the sum of $100.00, with interest thereon at the rate of 6 per centum per annum from
184 the 1st day of September, 1879, until paid, that being the date on which the sum aforesaid was credited to said Geo. L. Peyton & Co., and the said Comm'r Henry M. Mathews will duly account for the same.

And on the same day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Monday, the 10th day of May, 1880:

Special Commissioners Wm. A. Quarrier, Jasper Y. Moore, Henry M. Mathews, John Echols, and Adam C. Snyder this day filed their supplemental report in relation to the distribution of the cash instalment of the purchase-money arising from the sale of the White Sulphur Springs property and the payment of the costs attending the same, which said supplemental report is in the words and figures following, to wit:

C. S. Gay & Others
vs.
The White Sulphur Springs Co. & Others. } In Chancery.

To the Honorable John J. Jackson, judge district court of the United States for the district of West Virginia:

The undersigned, special commissioners, beg leave to re-
185 spectfully report that they have had under consideration the unpaid costs attending the management and sale of the White Sulphur Springs property and the proper mode of making distribution of the cash instalment of the purchase-money. In this statement they have not included any balances that may be due the clerk of this court for fees, whose fees cannot be finally taxed until the dismission of the suit, and which can be provided for on the coming in of the deferred instalments; nor have they made any provision for counsel fees other than those heretofore allowed by the court.

We report the costs as follows:

Fee allowed W. A. Quarrier	$5,000 00
" " Quarrier, commissioner	1,000 00
" " A. C. Snyder, "	1,000 00
" " John Echols, "	1,000 00
" " H. M. Mathews, "	1,250 00
" " Jasper Y. Moore, "	1,250 00
" " W. W. Gordon, "	1,000 00

Advertisements.

Harlow & Argobrite, "Greenbrier Independent"	167 00
H. E. Schaft, "Journal of Commerce"	153 09
R. F. Beirne, "Richmond State"	355 60
Courier Journal Co	120 20
Abell & Co., "Baltimore Sun"	210 60
John Hillyear, "Wall St. Journal"	316 00
J. B. Pemberton, "Gazette"	25 00
R. P. Warren, "Courier"	25 00

186 *Auctioneer.*

J. W. Dyche	150 00
	$13,022 40
Cash instalment	$34,050 00
Amount of costs	13,022 40
Bal. of cash to be distributed	**$21,027 60**

We recommend that the balance of cash shall be distributed *pro rata* among the holders of the "Singleton mortgage," of which there are 20 bonds of $5,000 each.

We are informed by Hon. H. M. Mathews, receiver and special commissioner in this case, that the purchaser, Wm. A. Stuart, has become the owner of all the Singleton mortgage bonds, except two of $5,000 each, held, respectively, by Dr. A. N. Welford and Alex. F. Mathews.

Amount to be distributed		$21,027 60
Pay A. F. Mathews on his bond	$1,051 38	
" D. A. N. Welford " " "	$1,051 38	
Charge Wm. A. Stuart, assignee, on his bonds	18,924 84	
		$21,027 60

All of which is respectfully reported.
May 10th, 1880.

JASPER Y. MOORE;
HENRY M. MATHEWS.
A. C. SNYDER.
JOHN ECHOLS.
WM. A. QUARRIER."

187 And the court having seen and inspected said report, it is adjudged, ordered, and decreed that the report aforesaid and the suggestions therein contained be approved and confirmed, and that said commissioners do proceed to pay out and adjust said cash instalment in the manner provided for in said report, and that they make report, &c.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held at Charleston, on Saturday, the 15th day of May, 1880:

Wm. Proctor Smith, having addressed a letter to the judge of this court complaining that he had not received adequate compensation for services rendered by him to the commissioners who made sale of the White Sulphur Springs property, and the court not being advised what services were rendered by said Smith nor what compensation he had received, it is ordered that the letter of said Smith be filed, and that the aforesaid commissioners report to the next term of this court what services have been rendered by said Smith and under what contract and whether anything, and, if so, how much, ought to be paid him; and it is further ordered that Henry M. Mathews, re-
188 ceiver in this cause, be empowered and authorized to assign to the purchaser, William A. Stuart, the insurance policies heretofore taken by him of the buildings situated upon the White Sulphur Springs property and which have not expired.

And at another day, to wit, in chambers, in the district court of the United States for the district of West Virginia, at Charleston, on the 25th day of August, 1880:

This cause came on this 24th day of August, 1880, to be further

heard upon the papers formerly read, and it is adjudged, ordered, and decreed that the claims for counsel fees filed in this cause by W. W. Gordon, Isaac N. Carrington, and the adm'rs of A. T. Caperton, dec'd, and mentioned in the report of Com'r Mathews be, and the same are hereby, disallowed, and the petitions of said claimants for said fees are severally dismissed without costs; and the claim of A. C. Snyder having been asserted only in the event the aforesaid fees should be allowed, the claim of said Snyder for a fee as counsel is also disallowed.

It is further ordered that the sums heretofore paid to Wm. P. Smith for services rendered in this cause shall be allowed and be in full for all services heretofore rendered by said Smith, and the claim of said Smith for an additional allowance
189 is hereby disallowed and rejected; and the court having examined the final accounts of Comm'r Henry M. Mathews rendered in this cause, and being satisfied that said com'r has properly disbursed all the moneys which came into his hands and with which he is chargeable as such com'r or as receiver on account of rents of the property of White Sulphur Springs Co., it is therefore further ordered that said disbursements be confirmed and allowed, and that said Mathews and his sureties be, and they are hereby, relieved and discharged from any liability as such com'r and receiver; and it is further adjudged, ordered, and decreed that George L. Peyton & Co. be allowed three hundred and sixty dollars, the cost of erecting two ice-houses on the White Sulphur Springs property, the same to be paid out of the proceeds of the sale of said property by the commissioners appointed to collect and disburse said proceeds.

Endorsed: "Enter: J. J. Jackson, judge D. C. U. S., D. W. Va. To the clerk of the D. c't, U. S., at Charleston." Teste: Jasper Y. Moore, clerk.

190 And at another day, to wit, at a district court of the United States for the district of West Virginia, held at Charleston, on Saturday, the 6th day of November, 1880:

It is ordered that the decree heretofore entered in this cause May 7th, 1880, be amended as follows, to wit: J. M. McWhorter, who is hereby appointed a special commissioner for that purpose, do execute and deliver to David Watts, Joel McPherson, W. B. Calwell, John F. Garing, and Samuel B. Gardner, as trustees of the M. E. Church South at the White Sulphur Springs, in Greenbrier county, West Virginia, a deed for the lot and church situate thereon, situate on the White Sulphur Springs lot in the suit mentioned, being the same lot that is mentioned and described in the decree entered in this cause on the 19th day of November, 1879.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held at Charleston, on Thursday, the 11th day of November, 1880:

Special Commissioners Snyder, Moore, and Quarrier this day filed their report of disbursements of the cash fund arising from the sale

in this cause, together with the vouchers showing the
191 receipts and disbursements, and there being no exceptions to said report, and the same being seen and inspected by the court, the said report and the disbursements therein contained are approved and confirmed; and it appearing from said report that there remains in the hands of Comm'r Snyder the net sum of $650.80, it is ordered that said Snyder do pay the clerk of this court the taxed fees of this suit now remaining due and unpaid, and the remainder thereof he do pay into the registry of this court, to be by the clerk loaned out upon the usual terms until the next term of this court; and it is ordered that said report be spread upon the records of the court *in extenso* at the foot of this order.

"C. S. GAY & Others
vs.
WHITE SUL. SP'GS CO. & *als.* } In Ch'y.

To the Hon. J. J. Jackson, judge of the district court of the U. States for the district of West Virginia:

Pursuant to a decree entered by your honor at the Charleston May term in the above suit the undersigned commissioners have collected and disbursed funds in said suit as follows:

Collections.

May, 1880.	From J. N. Camden, p'r dr'ft	$1,812 58	
May, 1880.	From W. A. Stuart, p'r dr'ft	1,812 58	
192 July, 1880.	From Rev. R. H. Mason, p'r ch'k	250 00	
			3,875 16

Disbursements.

May, 1880.	To Greenbrier Ind'p't, vou. 1	167 00	
" " "	J. W. Dyche, auctioneer, vou. 2	150 00	
" " "	R. P. Warren, "Courier," " 3	25 00	
" " "	Beirne&Chamberlayne, "State," vou. 4	58 80	
" " "	A. F. Mathews, vou. 5	1,051 38	
" " "	Baltimore Sun, " 6	210 60	
" " "	Wall Street Jour., " 7	212 00	
" " "	Courier Journal, " 8	120 20	
" " "	Kanawha Gazette " 9	25 00	
June, " "	Dr. A. W. Wellford, ex'r, &c., vou. 10	1,051 38	
July, " "	Journal of Commerce, vou. 11	153 00	
			3,224 36

Bal. in hands of Commissioner A. C. Snyder, subject to order of court $650 80

The above collections from J. N. Camden and W. A. Stuart were paid on account of the purchase of the White Sulphur Springs and

the collection from Rev. R. H. Mason was paid on account of the purchase of site for an Episcopal church on the spr'gs lot, as per decree heretofore entered.

Before entering the decree of May term, 1880, for the payment of the claims set forth therein Com'r H. M. Mathews had paid of the said claims—

To Richmond State	$296 80
And to Wall Street Journal	104 00
Total	400 80

Consequently this sum was left over after paying all the claims mentioned in said decree, and it, with the $250.00
193 received from the Rev. R. H. Mason as aforesaid, makes the balance of $650.80 aforesaid. Vouchers for all the disbursements above credited, numbered from 1 to 11, inclusive, accompany this report.

All of which is most respectfully submitted.

Sept. 15, 1880.

A. C. SNYDER.
WM. A. QUARRIER.
JASPER Y. MOORE."

And at another day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Monday, the 16th day of May, 1881:

James M. Nickell, in his own right and as administrator of James Nickell and as administrator of Isaac Nickell, by his counsel, Thomas B. Swann and James W. Davis, Esquires, this day tendered in open court a bill of review praying to review the decree of sale and the decree of confirmation and all the decrees and proceedings heretofore had in this suit, and thereupon James H. Ferguson, counsel for the purchaser in this cause, William A. Stewart, and William A. Quarrier, counsel for the complainants, appeared to and resisted the motion to file said bill of review, and the said
194 motion being argued and considered by the court the court is of opinion to, and doth decide to, refuse to allow said bill to be filed, and thereupon the said bill of review is rejected; and thereupon, upon the motion of said Nickell, an appeal is awarded to him from this decree to the Supreme Court of the United States, upon condition that the said Nickell or some responsible person for him shall within thirty days execute an appeal bond in the penalty of $1,000, conditioned according to law, with good security; and thereupon James W. Davis, as responsible person for said Nickell, and with Thomas B. Swann, his security, executed said bond, which said bond was by the court approved and said appeal perfected.

And at another day, to wit, in the district court of the United States for the district of West Virginia, at Charleston, March 1st, 1882, in vacation:

This cause came on this day to be further heard, & was argued by counsel; whereupon it is adjudged, ordered, & decreed that A. C. Snyder, who is hereby appointed special commissioner for that purpose, do execute to William Stuart a deed, with special warranty, for all the property purchased by said Stuart at the sale made on
195 the 31st day of March, 1880, in pursuance of the decree of 19th day of Nov'r, 1879, theretofore rendered in this cause, the said deed to reserve a lien upon its face for the unpaid purchase-money until the same is fully paid off and discharged; and the said A. C. Snyder, commissioner, is further authorized & directed to settle with the said Stuart at any time, upon his application, so far as the bonds for the purchase-money have already matured, or as the same shall hereafter mature, by crediting upon the said bonds the amounts to which the said William A. Stuart is entitled to credit for the liens held by him, as recognized by the previous decrees of this court establishing the order & priority of liens, and by receiving from him in cash so much of the amount of said bonds as may be going to other lien holders; and the said A. C. Snyder, com'r, is also authorized to cancel & deliver to said William A. Stuart any one or more of his said bonds, whether the same have matured or not, on being satisfied that the said Stuart is then holder & owner of all the claims payable out of the proceeds of such bond or bonds. The com'r will make report to this court from time to time of all actions under this decree.

(Endorsed:) "J. J. Jackson, judge. Feb'y 18, 1882." To
196 the clerk of the dist. c't U. S., at Charleston. Teste: ——, clerk.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held at Charleston, on Friday, the 12th day of May, 1882:

Special Commissioner Snyder this day filed his report of collections and disbursements of the fund arising from the sale of the lot sold to the Right Rev. Bishop Peterkin, for the Episcopal church at the White Sulphur Springs, in this cause, from which it appears that said collections amount to $1,465.80, and the disbursements, for which vouchers are filed with said report, amount to $800.10, leaving in the hands of said Com'r Snyder $565.70; and there being no exceptions to said report, and the same being seen and inspected by the court, the said report and disbursements therein contained are approved and confirmed, and it is ordered that said Com'r Snyder do pay into the registry of this court the said balance of $665.70 found in his hands by said report as aforesaid, to be by the clerk of this court loaned out upon the usual terms until the term of this court; and thereupon the said Snyder paid into the registry
197 the said sum of $665.70, in compliance with the direction in a former part of this order.

And at another day, to wit, in the district court of the United States for the district of West Virginia, at Charleston, August 31st, 1883, in vacation:

Ordered, That Jasper Y. Moore, register of this court, pay to Wm. Proctor Smith the sum of two hundred dollars in full for his services as engineer and surveyor rendered in this cause, either in the employment of Henry M. Mathews, receiver, or of the commissioners of sale in this cause, and that he take his receipt therefor and file the same with the papers in this cause.

August 28, 1883.

JACKSON, *Judge.*

Teste: JASPER Y. MOORE, *Clerk.*

And at another day, to wit, at a district court of the United States for the district of West Virginia, held at Charleston, on Monday, the 5th day of November, 1883:

A. C. Snyder, H. M. Mathews, Jasper Y. Moore, & W. A. Quarrier, commissioners in this cause, this day filed their petition herein praying for additional compensation in making settlements with
198 Wm. A. Stuart, the purchaser at the sale in this cause. It is ordered that a copy of said petition be served on said Stuart and that he do appear here forthwith to answer and say why the prayer of said petition be not granted.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Monday, the 26th day of November, 1883:

William A. Stewart this day filed his answer to the petition filed at a former day of this term by Commissioners Snyder, Mathews, Quarrier, and Moore, to which answer the petitioners reply generally.

It is therefore adjudged, ordered, and decreed that the registry of this court do, out of the funds in his hands to the credit of this cause, pay to Adam C. Snyder, Henry M. Mathews, William A. Quarrier, and Jasper Y. Moore the sum of two hundred and twenty dollars each on account of the matters set up in said petition; but liberty is reserved to the said William A. Stewart, at the next term of this court, to show, if he can, that said commissioners are not entitled to
199 the allowance made to them in this order as aforesaid and to have the said fund returned, in whole or in part, to the credit of this cause in the event said commissioners are not entitled to the allowance so made to them as aforesaid.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held at Charleston, on Saturday, the 5th day of January, 1884:

This cause came on this 5th day of January, 1884, to be again further heard upon papers formerly read and the report of the commissioners of sale asking to be instructed as to the proper manner of disbursing the fund, and was argued by counsel.

Upon consideration whereof it is adjudged, ordered, and decreed that the commissioners of sale, in disbursing and distributing the proceeds of the sale of the White Sulphur Springs property heretofore made by them under a decree of this court in this cause, and in paying therewith the debts heretofore reported and decreed to be paid, shall calculate interest upon the aggregate amount of the principal and interest thereof, aggregated as of October 15th, 1875,

the date to which the calculations are brought in the report of Commissioner H. M. Mathews, heretofore made, filed, and
200 confirmed in this cause, and not upon the original principals alone.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held at Charleston, on Wednesday, the 14th day of May, 1884:

Leave is given W. A. Stewart and the Greenbrier White Sulphur Springs Company, by petition or other proper proceedings to be had during the next term of this court, to apply for a decree vacating, correcting, or rehearing the decree entered herein on January 5th, 1884.

And at another day, to wit, in the district court of the United States for the district of West Virginia, at Charleston, June 3, 1884:

This day A. C. Snyder & others, commissioners, heretofore directed to settle with Wm. A. Stewart, the purchaser of the White Sulphur Springs property, returned their report of such settlement, which is filed.

Teste: JASPER Y. MOORE, *Clerk.*

The report of settlement referred to in the foregoing order is in the words and figures following, to wit:

201 In the District Court of the United States for the District of West Virginia.

C. S. GAY and *als. vs.* WHITE SULPHUR SPRINGS CO. & *als.*

MAY 31ST, 1884.

To Hon. J. J. Jackson, judge of said court:

Your commissioners respectfully present a statement of the settlement made by them on Oct. 15, 1883, with Wm. A. Stuart, purchaser of the White Sulphur Springs property, stated in accordance with the decrees rendered in said cause; and, at the request of said Wm. A. Stuart, they also present herewith a supplementary report, stated on a bases suggested by said Stuart.

Your commissioners further respectfully report that bonds No. 126, reported in the name of A. T. Caperton, ex'r, and No. 130, reported in name of Sam'l Price, in class 4, amounting, as of Oct. 15, 1875, to $984.25, and bond No. 125, reported in name of A. T. Caperton, in class 5, amounting, as of Oct. 15, 1875, to $1,857.55, and which were properly payable out of deferred payment due March 31, 1883, are still unpaid; and, further, that there is a balance of $583.52 due on bonds Nos. 112 & 114 of class No. 2 and bonds Nos. 67 & 91 of class 5.

The credits allowed in the account as stated are evidenced by the bonds of the White Sulphur Springs Co. and other evidences of debt surrendered to us by said Wm. A. Stuart and filed with this report and marked Exhibit A.

WM. A. QUARRIER,
A. C. SNYDER,
JASPER Y. MOORE,
Com'rs.

1883.	DR.			
Oct. 15	For first 3 deferred payments on While Sulphur Springs property, $61,290.00 ea., due, respectively, on March 31, 1881, March 31, 1882, & March 31, 1883			183,870
	Interest on same to Oct. 15, 1883			39,072 37
	CR.			222,942 37
Oct. 15	By 20 bonds class No. 1 (Singleton debt), of value as of March 31, 1880	151,273		
	Less bal. cash payment, after paying costs	21,027 60		
		130,245 40		
	Interest to Oct. 15, 1883	28,677 15		
			158,922 55	
	By bonds Nos. 113 & 115 of class No. 2, of Oct. 15, 1875	3,923 88		
	" interest to Oct. 15, 1883	1,883 46		
		5,807 34		
	Less 4 % int. on principal paid out of rents for the years 1875, 1877, & 1878	216 24		
			5,591 10	
	Bonds Nos. 101, 102, 103, & 104 of class No. 3, as of Oct. 15, 1875	7,254 91		
	Int. to Oct. 15, 1883	3,482 40		
		10,737 31		
	Less 4 % interest on principal paid out of rents for the years 1875, 1877, & 1878	399 87		
			10,337 44	
	Bonds Nos. 99, 100, & 137 of class No. 4, as of Oct. 15, 1875	2,593 35		
	Interest to Oct. 15, 1883	1,244 80		
		3,838 15		
	Less 4 % interest paid on principal out of rents for the years 1875, 1877, & 1878	142 96		
			3,695 19	

Bonds Nos. 90, 92, 93, 94, 95, 96, 98, 147, & 150 of class No. 5, as of Oct. 15, 1875		16,825 93		
Interest to Oct. 15, 1883		8,076 45		
		24,902 38		
Less 4 % interest paid on principal out of rents for the years 1875, 1877, & 1878		780 20		
			24,122 18	
A. F. Mathews, receipt for two notes on % of bonds Nos. 112 & 114 of class No. 2 and bonds Nos. 67 & 91 of class No. 5, viz:				
Note, May 8, '83, 4 mo., due 8-11 Sept.	4,928 44			
" " " 5 " " 8-11 Oct.	4,928 44			
		9,856 88		
Int. to Oct. 15, 1883		24 22		
			9,881 10	
3 coupons of bond No 2, class 6 (Erskine debt), of 1,310.92 each, amounting as of Oct. 15, '75, to		7,000 31		
Interest to Oct. 15, 1883		3,360		
			10,360 31	
Bal. due from W. A. Stuart			32 50	
			222,942 37	222,942 37

	DR.			
1883.				
Oct. 15	For first 3 deferred payments on the White Sulphur Springs property, $61,290.00 each, due respectively, on March 31, 1881, March 31, 1882, & March 31, 1883			183,870
	Interest on same to Oct. 15, 1883			39,072 37
				222,942 37
	CR.			
Oct. 15	By 20 bonds, class No. 1 (Singleton debt), of value as of March 31, 1880	151,273		
	Less bal. cash payment after paying costs	21,027 60		
		130,245 40		
	Interest to Oct. 15, 1883	28,677 15		
			158,922 55	
	Bonds 113 & 115 of class No. 2 as of Oct. 15, 1875	3,923 88		
	Additional interest on principal to Oct. 15, '83	865 12		
	" " coupons " "	363 35		
		5,152 35		
	Less 4 % on principal paid out of rents for the years 1875, 1877, & 1878	216 24		
			4,936 11	
	Bonds No. 101, 102, 103, 104 of class No. 3 as of Oct. 15, 1875	7,254 91		
	Additional interest on principal to Oct. 15, 1883	1,599 39		
	" " coupons " "	671 76		
		9,526 06		
	Less 4 % interest on principal paid out of rents for the years 1875, 1877, & 1878	399 87		
			9,126 19	

Bonds No. 99, 100, & 137, class No. 4, as of Oct. 15, 1875	2,593 35		
Additional interest on principal to Oct. 15, 1883	571 83		
" " coupons " "	240 13		
	3,405 31		
Less 4 % int. on principal paid out of rents, 1875, '77, '78	142 96		
		3,262 35	
Bonds No. 90, 92, 93, 94, 95, 96, 98, 147, & 150, class No. 5, Oct. 15, '75	16,825 93		
Additional int. on principal to Oct. 15, 1883	3,709 63		
" " coupons " "	1,558 03		
	22,093 59		
Less 4 % int. paid out of rents for the years, 1875, 1877, & 1878	780 20		
		21,313 39	
Receipt of A. F. Mathews on % bonds No. 112, 114, 67, & 91	9,856 88		
Interest	24 22		
		9,881 10	
3 coupons bond No. 2, class No. 6, $1,310.92 ea., amounting as of Oct. 15, 1875 to	7,000 31		
Additional interest on principal to Oct. 15, '83	1,887 72		
		8,888 03	
Bal. due from W. A. Stuart		6,612 65	
		222,942 37	222,942 37

205 And at another day, to wit, — clerk's office district court United States, district of West Virginia, at Charleston, July 9th, 1884:

This day Alex. F. Mathews tendered his exceptions in writing to the report of settlement made by Com'rs W. A. Quarrier & others with W. A. Stuart and filed on the 3rd day of June, 1884, in this cause, which exceptions are filed.

The "exceptions" referred to in the foregoing order are in the words and figures following, to wit:

"LEWISBURG, W. VA., *July* 4, 1884.

To Hon. Wm. A. Quarrier & *als.*, commissioners of the district court of the United States for the district of West Virginia, in the suit of C. S. Gay & *als.*, plaintiff, against The White Sulphur Springs Company & *als.*, defendants:

The undersigned, referring to the recent statement of account with Wm. A. Stuart made by said commissioners in said cause, respectfully points out the following errors therein by reason whereof he excepts to said account:

1st. The commissioners have erred in allowing said Stuart credit for certain coupons detached from bonds known in said suit as 'Erskine' bonds, Because—

I. No portion of the bonds of said Stuart for purchase-
206 money of property bought by him in said suit, so far as they have matured and become payable, is applicable to the payment of said coupons. All of said purchase-money embraced in said statement is required for the payment of debts in prior classes, and which have, therefore, preference.

II. Bonds Nos. 112 and 114 of class No. 2, and bonds Nos. 67 and 91 of class No. 5 all have priority over the class No. 6, to which these coupons belong, and the report or statement of account itself shows upon its face that these bonds have not been fully paid off as decreed, and until or unless this was first done said coupons should not have been paid or Stuart should not have been credited with them.

III. Other coupons held by other persons, from the same class of bonds, by virtue of decrees in this cause are entitled to priority over the coupons credited as aforesaid, and yet they still remain wholly unpaid. Until these were paid no such credit as this should have been allowed.

IV. Yet other coupons held by other persons from the same class of bonds are entitled to share and be paid ratably with these thus credited in full, and yet nothing has been paid upon them. If the coupons credited were entitled to be paid or credited at all they should only have been paid or credited to the extent of their
207 share or dividend of any fund applicable to their payment along with the other said coupons of the same dignity.

V. Two of the coupons, both from bond No. 2, one due Octo. 15, 1861, and the other due Octo. 15, 1862, with which said Stuart has been credited as aforesaid, have not been paid by and do not belong to him. In part, to the extent of some $3,000.00, they belong to the

exceptant, who has been paid nothing on their account, and yet in said statement Stuart is treated as their owner and is allowed credit for their full amount.

All of which is resp'y submitted.

ALEX. F. MATHEWS."

And at another day, to wit, at a district court of the United States for the district of West Virginia, held at Charleston, on Tuesday, the 12th day of May, 1885:

It appearing from the report of the commissioners of sale, this day filed, that William A. Stuart, the purchaser of the property heretofore sold under a decree in this cause, has made default in the payment of the fourth and fifth bonds executed by him for the same, and which became due on the 31st day of March, 1884, and 31st day of March, 1885, respectively, and which amount as of this date, principal and interest, aggregated to the sum of $160,212.06,
208 upon motion of said commissioners, and the court having maturely considered the same, it is ordered that rule issue against the said William A. Stuart, returnable here on the 23rd day of this month (May), requiring him to appear and show cause, if any he can, why the said property so sold as aforesaid by the commissioners of sale in this cause to him, and which is fully described in the report of sale filed by them, should not be resold at public auction for cash to pay the unsatisfied installments of purchase-money due by him as aforesaid, and why decree should not be made against him for so much of said unpaid purchase-money as the property upon a resale may not pay off and discharge and the cost of this proceedings.

Service of a copy of this order on the said William A. Stuart shall be taken as equivalent to a service of the rule therein required.

The "report of commissioners of sale," referred to in the foregoing order, is in the words and figures following, to wit:

"In the District Court of the United States for the District of West Virginia, at Charleston. In Chancery.

C. S. GAY & *als.*

209 *vs.*

WHITE SULPHUR SPRINGS CO. and *als.*

To Hon. J. J. Jackson, judge of said court:

Your commissioners, appointed for the sale of the property of the "White Sulphur Springs Company" mentioned and described in the report of sale in this cause, respectfully report that the fourth and fifth bonds executed by Wm. A. Stuart, the purchaser thereof, to your commissioners for said property are now past due and unpaid; that said bonds are each for the sum of $61,290.00, with interest thereon from March 31st, 1880, until paid, aggregating, as of this 12th day of May, 1885, the sum of $160,212.06.

Respectfully submitted,

WM. A. QUARRIER,
A. C. SNYDER,
JASPER Y. MOORE,
Commissioners.

The return of service of the last foregoing order and rule endorsed upon the same is in the words and figures following, to wit:

UNITED STATES OF AMERICA, }
District of West Virginia, } *ss:*

William H. Ramp, being first duly sworn, deposes and says that he served the within order on the within-named William A.
210 Stuart on the 13th day of May, 1885, in the city of Charleston, in said district, by delivering to him in person an office copy of said order.

W. H. RAMP.

Subscribed and sworn to before me, in my said district, this 13th day of May, 1885.

HENRY C. McWHORTER,
U. S. Commissioner, Dist. W. V.

And on the same day, to wit, at a district court of the United States for the district of West Virginia, held as last aforesaid, on the day last aforesaid:

This day A. C. Snyder, com'r, tendered his report in this cause, which is ordered to be filed; and it appearing from said report that there is a balance in his hands of $47.10, due said cause, it is ordered that the same be paid into the registry of this court, which is accordingly here done.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on Wednesday, the 13th day of May, 1885:

Ordered, that the registry of this court, out of the funds in
211 his hands to the credit of this cause, pay J. W. Mathews, Esq., the sum of twenty-five dollars for his services as clerk and accountant in making calculation of debts, &c., in settlement with Wm. A. Stuart, purchaser of said property, for his first three purchase bonds.

And at another day, to wit, at a district court of the United States for the district of West Virginia, held as last aforesaid, on Friday, the 22nd day of May, 1885:

The rule awarded and issued on a former day of this term against Wm. A. Stuart, and made returnable to-day, having been returned executed upon the said Stuart, it is ordered that said rule be docketed.

And on the same day, to wit, at a district court of the United States for the district of West Virginia, held as aforesaid, on the day last aforesaid:

This day Wm. A. Stuart tendered his petition and exhibits therewith in this cause, which petition and exhibits are ordered to be filed; and, upon the motion of said Stuart, he is allowed to withdraw the original exhibits filed with said petition by leaving certified copies thereof filed in this cause.

The petition referred to in the foregoing order is in the
212 words and figures following, to wit:

"In the District Court of the United States for the District of West Virginia, Sitting at Charleston, in said District. In Chancery.

C. S. GAY & Others

vs.

THE WHITE SULPHUR SPRINGS COMPANY & Others.

To the Honorable John J. Jackson, judge of said court:

Your petitioner, Wm. A. Stuart, respectfully represents unto your honor that by a decree rendered in the above-entitled cause, now pending in your honor's court, on the 19th day of November, 1879, the real estate of the said defendant, The White Sulphur Springs Company, was decreed to be sold to pay off and satisfy the debts theretofore proved and allowed in said cause against said company, and Henry M. Mathews, John Echols, W. W. Gordon, W. A. Quarrier, and Jasper Y. Moore were by said decree appointed special commissioners to make said sale. The sale of said real estate was made by said special commissioners on the 31st day of March, 1880, under and pursuant to said decree, at which sale your petitioner became the purchaser of said real estate for the sum of $340,000.00, and the said sale to your petitioner was confirmed by a
213 decree rendered in said cause on the 4th day of May, 1880.

Your petitioner now further alleges that before said sele was made the liens and priorities thereof upon the said real estate had been reported in said cause by Henry M. Mathews, to whom said cause had theretofore been referred for that purpose, which report was filed in said cause on the 21st day of April, 1876, and confirmed at the June rules for the said year 1876, all of which will appear by reference to the orders and proceedings made and had in said cause and now of record in your honor's court.

Your petitioner further alleges that the costs of said suit and sale amounted at the time of said sale to about $13,000.00, as will appear by the reports filed in said cause of the commissioners making said sale, leaving of the said purchase-money about $327,000 applicable to the payment of the liens reported and established upon said real estate; that the first six liens so reported and established are as follows, to wit:

1st lien. Principal	$100,000 00		
Interest	42,000 00		
		$142,000	00
2nd lien. Principal	$3,802 33		
Interest	4,465 95		
		8,278	28
214 3rd lien. Principal	$3,332 27		
Interest	3,922 64		
		7,254	91

4th lien. Principal	$1,643 46		
Interest	1,934 14		
		3,577	60
5th lien. Principal	$9,901 47		
Interest	11,692 05		
		21,593	52
6th lien. Principal	$66,453 74		
Interest	50,699 83		
		117,153	57

Making the total principal of said six first liens $185,133.27, and total interest $114,724.61, and the aggregate of principal and interest up to the said 15th day of October, 1875, the sum of $299,857.88.

It will thus be seen that, adding interest on the $185,000.00 of principal of the above liens from the said 15th day of October, 1875, the date to which it was computed by said Commissioner Mathews in his said report, to the 31st day of March, 1880, the date of said sale (which interest amounts to about the sum of $30,215.00), there was due on said six first liens about the sum of $330,000.00 on the day of said sale, and that the net proceeds of said sale, after deducting costs of suit and sale, would pay off in full the five first liens above mentioned and would pay a large amount, to wit, about
215 the sum of $130,000.00, on the said sixth lien, computing interest as above on the principal of said liens from October 15th, 1875, but a very much less amount, computing interest on the principal and interest aggregated of said liens from said date.

Your petitioner further alleges that the sixth lien aforesaid, as stated in said report of Commissioner Mathews, is made up of the following debts, to wit:

John Echols, trustee of Margaret L. Gay:			
Principal	$21,848 69		
Interest	16,543 81		
		$38,392	50
Samuel Price, trustee of E. E. Crockett:			
Principal	$21,848 69		
Interest	16,543 81		
		38,392	50
J. W. Johnston, trustee of Jane Boyd:			
Principal	$21,848 69		
Interest	16,543 81		
		38,392	50
A. F. Mathews:			
Principal	907 67		
Interest	$1,068 40		
		1,976	07

Your petitioner now alleges that before the said sale of said real estate he purchased from the said J. W. Johnston, trustee, the principal of the said debt reported in his favor, being the sum of

$21,848.69, and the said Johnston, by contract in writing,
216 bearing date the — day of ——, and by him subscribed, assigned and transferred the same to your petitioner for a good and valuable consideration, and your petitioner now and ever since owns the same. Said contract is here exhibited and made part of this petition.

That by contract in writing made between your petitioner and the said Samuel Price, trustee, and subscribed by both, bearing date the 23d day of April, 1875, your petitioner became entitled to all the proceeds of said real estate applicable to the aforesaid principal of the said debt reported in favor of said Price, trustee, said principal being the said sum of $21,848.69. Said contract is here exhibited and made part of this petition.

That by contract in writing made between your petitioner and the said John Echols, trustee, bearing date the 31st day of March, 1880, and subscribed by both, which contract was made on the day of the sale of said property and just before the sale commenced, your petitioner became entitled to all of the proceeds of said sale applicable to the said debt of the said Echols, trustee, as reported by said commissioner. Said last-named contract is also here exhibited and made part of this petition.

Your petitioner, before said sale, thus became entitled to
217 all of the proceeds of sale applicable to the said 6th lien, except the part of said proceeds applicable to the interest coupons and interest on the debt of said Price, trustee, amounting, together, to the sum of $16,543.81, and to the interest coupons and interest on the said debt of Johnston, trustee, amounting, together, to a like sum of $16,543.81, and to the said debt of A. F. Mathews, amounting, principal and interest, to the sum of $1,976.07. The said interest and interest coupons on the said debts of Price, trustee, and Johnston, trustee, were assigned by said Johnston, trustee, and Price, trustee, respectively, to other parties unknown to petitioner before the principal- of said debts were assigned, as heretofore stated, to petitioner and the owners of the said interest coupons and interest claim, and the court has so adjudicated; that they are entitled to be paid in full out of the proceeds of said sale before the principal of said debts owned and controlled as hereinbefore stated by your petitioner shall share at all in said proceeds.

Your petitioner now further alleges that at an adjourned term of the said district court, held on the 5th day of January, 1884, an order was made in said cause directing said commissioners who made sale of said real estate, in distributing the proceeds of said sale and paying therewith the debts theretofore reported and
218 decreed to be paid, shall calculate interest upon the aggregate amount of principal and interest thereof aggregated as of October 15th, 1875, the date to which interest is computed in the report of Commissioner Mathews theretofore made, filed, and confirmed in said cause, being the report hereinbefore referred to.

Neither your petitioner nor his solicitor in said cause was present at the said adjourned term, and had no notice or knowledge that such an order was to be entered or applied for, and had no notice or

knowledge that such an order was made in said cause until after the adjournment of said adjourned term.

That at the following May term of said court an order was made in said cause giving leave to your petitioner and the Greenbrier White Sulphur Springs Co., by petition or other proper proceeding to be had during the next term of said court, to apply for a decree vacating, correcting, or rehearing the said decree of January 5th, 1884, and your petitioner thereupon employed W. H. Hogeman, an attorney practicing in said court, at once to prepare such petition and take such steps as was necessary at the then next term to vacate, correct, or rehear said decree, but the said W. H. Hogeman did not at the said next term prepare such petition or take such steps,
219 but failed to do so, as your petitioner is now informed and believes, on account of sickness, which, very soon after said term, terminated in his death.

Your petitioner is aggrieved and injured by the said order of January 5th, 1884, and is advised and so charges that the same is erroneous and contrary to the established rules and practice of this court; that by the said order interest is compounded upon the said six first liens, and the interest thereon, as stated in the said report of Commissioner Mathews, is made to bear interest for years in the absence of any contract between debtor and creditor and of any provisions of law or rule of court which would so make them bear interest.

That a decree was rendered in said cause at the May term, 1876, of said court simply confirming said report of Commissioner Mathews, but no decree has ever been rendered in said cause against the said White Sulphur Springs Company, the debtor owing said debts, directing the payment thereof, nor any decree directing or ascertaining from what time or on what sums interest should be computed until the aforesaid order of January 5th, 1884, instructing said commissioners of sale how to distribute the proceeds of sales.

That by said order of January 5th, 1884, made long after your petitioner had purchased said real estate and became
220 entitled to the proceeds thereof applicable to the largest part of said 6th lien, as hereinbefore stated, the interest-bearing fund of said six first liens is changed from $185,133.27, the original principal of said liens, to the sum of $299,857.88, the principal and interest of said liens aggregated as of the 15th day of October, 1875, and the sum of $114,724.61, interest on said six first liens, is thus made to bear interest for almost four and one-half years before sale is made, and also after sale until reached in their proper order of priority, as the purchase-money of said real estate fell due under the terms of sale, and in this way over $30,000.00 of the proceeds of said sale is applied to the payment of interest upon the interest of said liens, the principal part of which will, under said order of January 5th, 1884, be applicable to the interest computed on the said sixth lien, and the entire amount of which will be deducted from the principal of the debts in the said 6 lien, all of which principal is owned and controlled by your petitioner, as herein stated, except $907.67 owned by said Mathews.

Your petitioner is advised and so charges that only the original principal of the said six first liens should bear interest until the same are reached in their proper order of priority out of the proceeds of said sale, and that the aforesaid decree of your
221 honor's court of January 5th, 1884, is simply an interlocutory decree giving instructions to your commissioners who made said sale, and it is wholly within the power of the court to vacate, set aside, or modify said decree and change said instructions at any time, or to give other and different instructions to said commissioners.

Your petitioner therefore prays that the aforesaid decree of January 5th, 1884, be vacated, set aside, and held for nought, and that your honor will so change and modify the instructions therein given your said commissioners as to direct them, in distributing the proceeds of the said sale of said real estate and paying the five first liens thereon aforesaid, to calculate the interest on the original principal of each of said liens and not upon the principal and interest thereof, aggregated and compounded as directed by said decree of January 5th, 1884; and, as in duty bound, your petitioner will ever pray.

WM. A. STUART,
By KNIGHT & COUCH, *Solicitors.*

KNIGHT & COUCH, *Solicitors.*"

STATE OF WEST VIRGINIA, *County of Kanawha,* } *To wit:*

This day Wm. A. Stuart, the plaintiff in the foregoing petition, personally appeared before me in my said county and made
222 oath that the allegations in said petition are correct and true as he verily believes.

Given under my hand this 23d day of May, 1885.

EDWARD B. KNIGHT,
A Notary Public for Kanawha County, West Va.

The "Exhibits" referred to and made part of the foregoing petition are in the words and figures following, to wit:

EXHIBIT.

"The undersigned, John W. Johnston, in his capacity of trustee for Jane C. Boyd, being the holder and being entitled, under a decree of Botetourt circuit court, to dispose of a certain coupon bond, number three, of the White Sulphur Springs Company, bearing date October 15th, 1857, and payable ten years after date to Samuel Price, Thomas Mathews, and Mason Mathews, executors of Henry Erskine, dec'd, for twenty-one thousand eight hundred and forty-eight $\frac{69}{100}$ dollars, assigned by said executors to William W. Boyd, trustee for Jane C. Boyd, without recourse, from which bond all the coupons for interest, up to and including October 15th, 1867, have been detached and either collected or transferred to other persons, and on which all
223 the interest in arrear up to October 15th, 1875, has been either collected or parted with to other persons save and except a small

balance on the year's interest maturing October 15th, 1875, and the interest from October 15th, 1875, up to the date hereof; and being the holder also of a written guarantee from Geo. L. Peyton & Co. as to the payment of the yearly interest on said bond until the White Sulphur Springs property shall be sold under proceedings in the chancery cause of C. S. Gay *et al. vs.* The White Sulphur Springs Company and others, in the district court of the United States for the district of West Va, at Charleston depending, in which suit the said bond has been duly proven, has sold the said bond, together with the said guarantee as to the payment of interest thereupon, to William A. Stuart upon the terms and with the stipulations following—that is to say, the right to collect and receive all arrears and balances of interest up to October 15th, 1875, is reserved and retained to the said Johnston, trustee, &c., and to his assignees and transferees, and this sale embraces only the principal of said bond and the interest thereon from and after October 15th, 1875, amounting together to the sum of $22,394.90, for which the said Stuart has paid
224 to the said Johnston, trustee, &c., in cash the sum of two thousand five hundred dollars and has executed to him his bond of even date herewith for nineteen thousand three hundred and eighty-eight $\frac{46}{100}$ dollars ($19,388.46), payable five years after date, with interest thereon from October 15th, 1875, till paid, said interest payable annually on the 15th October in the years 1876, 1877, 1878, 1879, 1880, and the last five months of interest to be paid, along with the principal of the bond, on the 15th day of March, 1881; and as a security for the full and prompt payment of said bond for $19,388.46 and of the interest thereupon the said William A. Stuart has pledged as collateral and left in the hands of the said Johnston, trustee, &c., the said bond of the White Sulphur Springs Company and the said written guarantee of Geo. L. Peyton & Co.; and it is understood and agreed that this sale is made, and that any formal assignment hereafter required in furtherance thereof will be made, without recourse upon the said Johnston, trustee, &c., or upon the parties or the trust fund represented by him, this stipulation applying both to the said bond and to the said guarantee of interest; and any payments of interest made by Geo. L. Peyton & Co. on
225 account of their said guarantee into the hands of the said Johnston, trustee, &c., are to be apportioned between the parties hereto in proportion to their respective interests hereunder, but it is expressly understood that the undersigned Wm. A. Stuart is to pay the interest as provided in his bond above described in case the said Geo. L. Peyton & Co. fail to meet the interest.

Witness the following signatures and seals this 15th day of March, 1876.

(Signed) JOHN W. JOHNSTON, [SEAL.]
Trustee for J. C. Boyd.
W. A. STUART. [SEAL.]"

I, Jasper Y. Moore, clerk of the district court of the United States for the district of West Virginia, do hereby certify that the forego-

ing is a true copy of the agreement between John W. Johnston and W. A. Stuart on file in this office.

In witness whereof I hereunto subscribe my name and affix the seal of my said court, at Charleston, this 25th day of May, 1885.

[SEAL.] JASPER Y. MOORE,
Cl'k D. C. U. S, D. W. Va."

226 EXHIBIT.

"There is a cause depending in the Federal court at Charleston, West Va., of Charles S. Gay & wife & *al.* against The White Sulphur Springs Company & others, in which I feel interested, being the owner of a considerable amount of debts secured by liens upon the property, and am desirous that the property shall be sold by a decree to be rendered at the present term of the court, and Samuel Price, as trustee for E. E. Crockett, holds a debt of twenty-odd thousand dollars, known as a part of the Erskine debt, & I have agreed with said Price, trustee as aforesaid, that when the property is sold that it shall bring a sum sufficient to pay said debt or I will pay it myself at the end of ten years, & in the meantime I will pay the interest annually on said debt, the first year ending the 10th day of Oct., 1875: Provided, however, If the improvements at the said springs shall be materially injured by fire or other extraordinary causes, such as war or the like, so that the property will not bring the sum required, — there shall be a rateable abatement from the guarantee aforesaid, I am to have the control of the debt at once, the security, however, still to remain on the property or such
227 other given as may be satisfactory, & in any event to have the ten (10) years to pay the principal upon paying the interest annually.

Witness my hand & seal this 23d April, 1875, in duplicate.

W. A. STUART. [L. S.]

I accept the above proposition.

Witness my hand & seal April 23d, 1875, in duplicate.

SAM'L PRICE. [L. S.]

A copy.

Teste: JASPER Y. MOORE,
Cl'k D. C. U. S., D. W. Va."

EXHIBIT.

"Stuart to bid what will probably cover Mrs. Gay's debt, &, if insufficient, the deficiency to be made good to her by him. At the expiration of the time or times when Mrs. Gay's debt will be reached according to the terms of sale and the priorities established, Stuart is to give his obligation or obligations, satisfactorily secured, for the amount of said debt, payable five years from such time or times, with interest from date, payable annually, and no capitalizing of interest until the expiration of the time or times first herein
228 referred to, and from the am't of accrued interest when such

obligations are to be given shall be deducted the sum of fifteen hundred dollars.

Given under our hands March 31st, 1880.

W. A. STUART,
JNO. ECHOLS,
Trustee-, &c.

I advise acceptance of the above proposition by the trustee of Mrs. Gay & children.

HUGH W. SHEFFEY, *Com'r.*

A copy.
Teste:

JASPER Y. MOORE,
Clk D. C. U. S., D. W. Va."

And at another day, to wit, at a district court of the United States for the district of West Virginia, held at Charleston, on Monday, the 25th day of May, 1885:

This day Alex'r F. Mathews, who filed exceptions on the 9th day of July, 1884, to the report of settlement made by the comm'rs of sale with W. A. Stuart, and filed June 3, 1884, withdrew the exceptions, marked I, II, III, and IV, and, by consent of said ac-
229 ceptant and of W. A. Stuart, the questions raised by exception marked V and the liability of W. A. Stuart for a balance on the third bond executed by him for the property heretofore sold under decrees in this cause are continued and reserved by the court for its future action, to be had at the next term of this court.

And the court, having heard the arguments of counsel and having duly considered the petition presented by W. A. Stuart on a previous day of this term asking that the decree entered in this cause on the 5th day of January, 1884, shall be reheard, and that it be vacated and annulled, is of opinion that the petitioner is not entitled to the relief prayed for, and it is therefore adjudged, ordered, and decreed that said relief be refused, said petition rejected, and that the said decree of Jan'y 5, 1884, be in all respects confirmed.

And the said W. A. Stuart then moved the court to quash and discharge the rule awarded against him on a previous day of this term, which motion the court doth hereby overrule; and thereupon the said Stuart, by leave of court given, filed his answer with exhibits to said rule, to which the plaintiffs in said rule, the comm'rs of sale in this cause, replied generally, and, the same being
230 argued by counsel, the court thereupon offered said Stuart to allow him until to-morrow to make a further settlement with the said comm'rs for the purpose of establishing, and having allowed him, if proper, the credits claimed in his said answer upon his fourth and fifth bonds executed for the property bought by him as aforesaid; but the said Stuart stated in open court that he had, in Octo., 1883, turned over to said comm'rs all the claims he held against the White Sul. Spr'gs Co., except the contracts with John Echols & Sam'l Price, trustees, exhibited with his said answer to the rule, which contracts the com'rs would not accept and credit on his bonds, and that, therefore, it was useless to give the further time of-

fered to settle with said comm'rs; and thereupon the said commissioners of sale stated in open court that, at the instance and request of W. A. Stuart, they had on two occasions gone to the White Sulphur Springs to meet him for the purpose of making settlement with him on account of his said purchase; that they afterwards & for the same purpose met him at Charleston, but that on neither occasion was said Stuart ready and able to make such settlement, and that afterwards, in October, 1883, they went to Wheeling on the same business and met said Stuart
231 there, and, all being then hurried and lacking time, no definite and conclusive settlement was made, but the said Stuart turned over to them a large amount of evidences of debt against the White Sulphur Springs Company, enough as was supposed to discharge his first three purchase-money bonds, and said bonds were surrendered to him & said evidences of debt receipted for by said comm'rs, but an exact & accurate computation & adjustment of the matter was postponed for a calculation and report to be made by an accountant, to which statement by said comm'rs the said Stuart in open court assented and admitted its correctness; and it appearing from the report of the comm'rs of sale filed at the present term that the said fourth and fifth bonds of W. A. Stuart are now past due and still wholly unpaid, and that they amount as of the 12th day of May, 1885, to the sum of $160,212.06, it is therefore further adjudged, ordered, and decreed that the said comm'rs of sale, the plaintiffs in said rule, recover from the said W. A. Stuart the said sum of $160,212.06, with interest thereon from the 12th day of May, 1885, and the costs upon said rule, with the right reserved to them to apply for a further decree for any balance that may hereafter be ascertained to be unpaid by the said Stuart on his said third
232 bond; and unless the said Stuart or some one for him shall, within thirty days from this date, pay the said amount now herein decreed against him, then W. A. Quarrier, Jasper Y. Moore, A. C. Snyder, and J. W. Mathews, any one or more of whom may act, said A. C. Snyder being one, who are hereby appointed special commissioners for the purpose, shall proceed, after having advertised the time, terms, and place of sale for four consecutive weeks by notice published in the "Greenbrier Independent," a newspaper published in the town of Lewisburg, in Greenbrier county, W. Va., and in the "Richmond State," a newspaper published in the city of Richmond, and posted at the front door of the court-house of Greenbrier county and at some public place or places at the White Sulphur Springs, to resell the property heretofore sold in this cause and bought by W. A. Stuart, consisting of 7,000 acres of land, more or less, known as the "White Sulphur Springs" property, and 2,800 acres, more or less, known as the "Hoke" tract, at the White Sulphur Springs, in front of the hotel, at public auction, to the highest bidder for cash; and it appearing from the deed executed by W. A. Stuart to the Greenbrier White Sulphur Springs Co., and which is here now filed as an exhibit in this cause,
233 that the said Stuart, in conveying said 7,000 acres to said company, did not retain any lien for his purchase-money on

a certain two acres, part of said 7,000 acres, and which is particularly described and defined in said deed, it is further adjudged, ordered, and decreed that said comm'rs shall sell the said 7,000 acres, the "White Sulphur Springs" property, exclusive of said two acres, which shall not be sold unless it shall hereafter prove necessary and until the further order of the court; and the comm'rs shall make report of their proceedings under this decree to the next term of this court, and out of the purchase-money for the property to be paid them at said resale, when said report shall have been made & confirmed, they shall pay the unpaid costs of this suit, the expenses of said resale, the debts heretofore decreed and allowed in this cause, so far as unpaid, according to their respective amounts, dignities, and priorities, with the interest accrued or yet toa ccrue thereon, and hold the balance, if any, subject to the future order of the court and to any liability which may be found upon said Stuart for a balance on his said third bond as aforesaid; but, before receiving
234 any money under this decree, the said comm'rs, or the one acting and receiving the proceeds of said resale, shall give bond in the penalty of $50,000, with security, to be approved by the clerk of this court, conditioned according to law.

And the said W. A. Stuart thereupon asked the court to allow him an appeal from this decree to the Supreme Court of the United States, but the court refuses to do so, because the decrees in this cause fixing the rights of the parties, determining the amounts, dignities, & priorities of the debts and directing sale of the property were all entered more than five years ago, and the decree of Jan'y 5th, 1884, was simply explanatory of a former decree.

The "answer" referred to in the foregoing order is in the words and figures following, to wit:

"The answer of W. A. Stuart to a rule issued against him on the 12th day of May, 1885, in the chancery cause pending in the district court of the United States for the district of West Virginia, sitting at Charleston, in said district, wherein C. S. Gay and others are complainants and The White Sulphur Springs Co. &
235 others are defendants, to show cause why the property purchased by him under the decree of said court in said cause should not be resold at public auction for cash to pay the unsatisfied instalments of purchase-money due by him, &c.

To the Honorable John J. Jackson, judge of said court:

Your respondent, Wm. A. Stuart, for answer to said rule, says that no decree for the resale of said property should be made upon said rule—

First. Because, by a decree rendered in said cause on the 2nd day of March, 1882, the court directed A. C. Snyder, who was by said decree appointed a special commissioner for the purpose, to execute to respondent a deed, with special warranty, for all of said property, the said deed to reserve upon its face a lien for the unpaid purchase-money until the same is fully paid off and discharged, and the said A. C. Snyder, special commissioner, executed said decree on the 17th

day of March, 1882, by executing and delivering to respondent the deed so directed, bearing date the day last named, conveying to respondent the said property and retaining a vendor's lien for the unpaid purchase-money, which deed is here exhibited and made part of this answer.

236 And respondent respectfully submits that the lien retained in said deed cannot be enforced in this manner upon a rule, but only by an original suit in a court of equity.

Second. Because there is no such amount due upon the purchase-money of said property as is mentioned in said rule and stated in the report of Commissioners W. A. Quarrier, A. C. Snyder, and Jasper Y. Moore, upon which the said rule is founded.

Your respondent has paid to the said commissioners in cash and turned over to the said commissioners liens held and owned by him and entitled to satisfaction out of the bonds now held by said commissioners for the unpaid purchase-money of said property under the terms and provisions of the said decree of March 2nd, 1882, to such an amount as entitles the respondent to credit for many thousands of dollars on said bonds for said purchase-money, and for which the said commissioners have as yet given no credit.

The respondent cannot state the precise amount of the liens he has so turned over to the said commissioners for which he is entitled to credit on said bonds and for which no credit is yet

237 given, as he has never had any settlement with said commissioners, but there is one debt included in the 6th lien as allowed and established in said cause upon said property, and which is held and owned by respondent, and was so held and owned by him when said property was purchased, viz., the debt in favor of John W. Johnston, trustee of Jane C. Boyd, and which is entitled to a large share of the said unpaid purchase-money, — was so turned over to the said commissioners on October 20th, 1883, and now amounts to over $28,000.00, and no credit has as yet been given respondent therefor upon said purchase-money.

Third. Because the respondent has, since the said purchase of said property, on the 31st day of March, 1880, from time to time paid large sums upon the purchase-money of said property to creditors entitled thereto and turned over on the said 20th of Oct., 1883, to the said commissioners large amounts of liens upon said property, entitled to satisfaction out of said purchase-money which had been so paid off by respondent and for which he is entitled to credit on said purchase, as provided in said decree of March 2nd, 1882, and no computation or settlement of the liens so turned over

238 has ever been had between them. The said commissioners called your respondent to Wheeling, in West Va., on October 20th, 1883, to make a settlement, but when he arrived on that day and met the said commissioners they informed him they had not then time to make a settlement, and your respondent then turned over to the said commissioners a lot of liens he then held and owned and had paid off on said property which were entitled to payment out of said purchase-money, and took their receipt for the same, and no settlement has ever been made between said commissioners

and your respondent, and neither the said commissioners nor your respondent can tell, until a settlement is made, within thousands of dollars how much is due upon said purchase-money after giving respondent credit for the amount of said purchase-money applicable to the liens so turned over to the said commissioners, and no resale should be ordered till this is done and the balance, if anything, due from respondent on said purchase-money is ascertained. The aforesaid receipt of said commissioners is here exhibited and made part of this answer.

Fourth. Because, as will be seen by an inspection of the
239 report of Commissioner H. M. Mathews filed and confirmed in said cause showing the liens and the priorities thereof upon said property, the purchase-money of said property will pay off in full the five first liens so reported and will make a large payment upon said sixth lien, but will probably not quite pay the same in full; that at the time of the sale of said property your respondent was and ever since has been entitled in the manner hereinafter stated to all the proceeds of said property applicable to the following debts reported in said 6th lien, to wit: The debt of John Echols, trustee of C. S. Gay, amounting, principal and interest, October 15th, 1875, to the sum of $38,392.50; the principal of that portion of said 6 lien reported in favor of Samuel Price, trustee of Elizabeth E. Crocket, amounting to $21,848.69, and the principal of that part of said 6 lien reported in favor of John W. Johnston, trustee of Jane C. Boyd, amounting to $21,848.69; that the residue of said 6th lien is made up of interest coupons and interest and held by various parties who claim under an earlier assignment from said Price & Johnston, trustee-, than the assignment of the principal of said debts made, as above stated, to your petitioner, and who claim that
240 said interest and interest coupons held by them shall be paid off out of the proceeds of the sale of said property before the principal of the said debts of Johnston & Price, trustee-, held and owned by your petitioner, shall receive anything; that the six first liens, as stated in said report of Commissioner Mathews, amounted on the 15th day of October, 1875, to about $185,000.00 of principal and $114,000.00 of interest; that an order was made in said cause on the 5th day of January, 1884, in effect directing said commissioners of sale in distributing the proceeds of the sale of said property to pay interest on the aforesaid interest from the said 15th day of October, 1875, till paid; that your petitioner has filed a petition in said cause asking the court to so change and modify the said order and the instructions given therein to said commissioners as to direct them in distributing the said purchase-money and paying off said liens to pay interest only on the principal thereof, as stated, in said Commissioner Mathews' report, from the said 15th day of October, 1875, till paid; that said petition is still pending and undetermined in said cause, and the matters alleged and relief prayed
241 for therein have not been adjudicated; that the interest on said interest so directed to be paid by the said decree of January 5th, 1884, will amount to over $30,000, and if paid almost the entire amount thereof will come from that part of the purchase-

money of said property that would otherwise be applicable to those debts in said 6th lien held and owned by your petitioner; and if said decree of January 5th, 1884, and the instructions therein given the said commissioners are modified as prayed for in said petition your respondent will be entitled to credit on the purchase-money of said property on account of his part of said 6th lien to a sum exceeding $30,000.00 more than he will be if said order of January 5th, 1884, and the instructions therein given the said commissioners are carried out and enforced.

And your respondent respectfully submits that no decree of resale should be made until this question of the proper distribution of the proceeds of sale is finally settled and the credit to which your respondent is entitled on his part of said 6th lien is ascertained.

Fifth. Because by contract in writing between the said John W. Johnston, trustee, and respondent, subscribed by said
242 Johnston, dated the — day of ——, the said Johnston, trustee, assigned and transferred to respondent that part of said 6th lien reported as principal in his favor, to wit, the sum of $21,848.69, and the same is now held and owned by respondent, and he is entitled to all of the purchase-money of said property applicable thereto.

And by contract between said Samuel Price, trustee, and your respondent, dated April 23d, 1875, and subscribed by both, your respondent undertook and agreed that the said property should bring a sum sufficient to pay the principal of the said debt reported in favor of said Price, trustee, in said report of H. M. Mathews, or respondent himself would pay it in ten years after the sale was made, with annual interest, if the said property did not bring a sum sufficient to pay the said debt, and respondent to have control of said debt at once, and in any event the respondent was to have ten years after said sale to pay said debt.

And by contract in writing between the respondent and the said John Echols, trustee, and subscribed by both, dated March 31st, 1880, and made just before the sale of said property, respond-
243 ent agreed to bid for said property what would probably cover the said claim reported in favor of said Echols, trustee of Mrs. C. S. Gay, and was to have five years in which to pay the same after the purchase-money fell due on said property by the terms of sale; each of said contracts are exhibited with the said petition of respondent filed in said cause and are made part of this answer and prayed to — read and considered as part thereof.

Respondent therefore avers that he, having assumed the payment of the said debts to Price, trustee, & Echols, trustee, is entitled to all the purchase-money of said property applicable to said debts, and at most the said Price & Echols, trustees, only held the same as collateral to secure the payment of said debts by respondent, according to his said assignment, and the said debts by the terms of said contracts not being due for a long time yet from respondent to the said Echols & Price, trustees, no decree of resale for any part of the purchase-money applicable thereto or to the debt of said Johnston, trustee, should now be made.

Respondent is now ready and has ever been ready to pay every creditor in said cause entitled to share in the proceeds of the
244 sale of said property every dollar to which he is entitled whenever due and the amount is fairly and justly ascertained.

Sixth. Because the circuit court of the United States for the State of West Virginia, sitting at Parkersburg, in said State of West Virginia, by a decree rendered on the — day of ——, in a suit in chancery then and still pending in said circuit court, wherein respondent is the complainant and The Greenbrier White Sulphur Springs Co. & others are defendants, seized the said property and placed the same in the care and control of A. L. Boulware, then appointed its receiver for that purpose, in whose care and custody the said property still remains, and said commissioners have obtained no order from said circuit court authorizing or directing this prosecution of said rule. A certified copy of said decree is here exhibited and made part of this petition.

And the respondent, having fully answered, prays that the said rule may be discharged.

WM. A. STUART,
By KNIGHT & COUCH, *Sol's.*

KNIGHT & COUCH, *Sol's.*

STATE OF WEST VIRGINIA, }
County of Kanawha, } *To wit:*

245 This day Wm. A. Stuart, the defendant named in the foregoing answer, personally appeared before me in my said county and made oath that the allegations therein contained are correct and true as he verily believes.

Given under my hand this 25th day of May, 1885.

EDWARD B. KNIGHT,
Notary Public for Kanawha Co., West Va.

The "Exhibits" referred to and made part of the foregoing answer are in the words and figures following, to wit:

EXHIBIT.

"This deed, made this 17th day of March, 1882, between A. C. Snyder, special comm'r, of the first part, and Willim A. Stuart, of the county of Washington & State of Va., of the second part.

Whereas Henry M. Mathews, John Echols, W. W. Gordon, W. A. Quarrier, Jasper Y. Moore, and said A. C. Snyder, special commissioners, in pursuance of the authority vested in them by a decree of the district court of the United States for the district of West Virginia, sitting at Charleston, in said district, made on the 19th day of November, 1879, in a suit in equity therein pending, in which C. S. Gay & others were plaintiffs and The White Sulphur
246 Springs Company & others were defendants, did sell the real estate hereinafter mentioned conveyed according to the terms and conditions required by said decree, at which sale the said William A. Stuart became the purchaser at the price of

$340,500, of which he paid in cash $34,050, and for the balance he executed to said comm'rs his five several bonds for sixty-one thousand two hundred an- ninety (61,290) each, dated on the 31st day of March, 1880, and payable one, two, three, four, and five years after date, respectively, with interest thereon from date; and whereas the said court having, by a subsequent decree made in said suit on the — day of May, 1880, confirmed said sale, and by a decree made on the 1st day of March, 1882, appointed said A. C. Snyder a special commiss'r for the purpose, and directed him to execute to said William A. Stuart a deed, with special warranty, for the property purchased by him at said sale, and reserve a lien upon the face of such deed for the unpaid purchase-money until the same is fully paid and discharged:

Now, therefore, this deed witnesses that the said A. C. Snyder, commiss'r as aforesaid, has this day granted and con-
247 veyed, and does hereby grant and convey, with special warranty, unto the said William A. Stuart, the following real estate, viz: A certain tract or boundary of land lying in the county of Greenbrier & State of West Va., containing about seven thousand (7,000) acres, known as the "Greenbrier White Sulphur Springs property," and by a survey made in 1853 by S. S. Thompson is bounded as follows: Beginning at 2 small pines in a hollow where an original corner stood (2 white oaks); thence N. 27 W. 52 po's to 3 small pines in a hollow; N. 53 W. 263 po's, crossing Turnpike road & Howard's creek to a small peach tree in corner of fence, corner to & with Daniel Salsberry; N. 39 W. 19 po's to a stake by pig-pen; N. 78 W. 44 po's to two white oaks in hollow; N. 84 W. 64 po's to a dogwood & white oak on the old Vanosdale line, & with N. 54 W. 18 po's to his corner, & with N. 28 E. 140 po's to a sugar & yellow lynn; N. 78 W. 40 po's to a white oak & hickory; N. 20 E. 28 po's to 3 hickories by a branch, corner to a small survey of Banks, & with N. 10 E. 170 po's to white oak, pine, & chestnut, marked F. B.; N. 43 E. 330 po's to a large white oak in a bottom, corner to & with Mastin; N. 15 E. 90 po's to a maple, corner to Haptenstall's survey on the Dutch run, & with N. 72 W. 52 po's to a large white oak & white oak sapling; S. 82 W. 50 po's to 2 white oaks near the left-hand fork of said run; N. 10 W. 44
248 po's, crossing the forks & passing a deer lick to a white oak and black oak, and leaving N. 52 W. 290 po's to two white oaks, corner to Young's survey, and leaving with Brown's S. 18. W. 760 po's to hickory & black gum by branch S. 58 W. 274 po's to 2 hickories & white oak, and leaving S. 25 E. 114 po's to chestnut pointers on ridge; S. 40 W. 168 po's to 3 tall black oaks; S. 80 W. 366 po's to a black oak, white oak, & hickory; S. 18 W. 415 po's to two pines by Howard's creek & pike corner to and with north; S. 60 E. 40 po's to pine & white oak corner to and with Erwin; N. 89 E. 80 po's to two sugars by pike corner to & with Dickson; S. 88 E. 182 po's to pine & white oak; N. 72 E. 390 po's to black oak & hickory in draft; S. 13 E. 18 po's to poplar, & leaving N. 83 E. 80 po's to 3 hickories corner to Mrs. Bedford, & with N. 70 E. 88 poles to two dogwoods & cherry at foot of hill; S. 59 E. 68 po's to ironwood &

ash sapling; S. 87½ E. 30 po's to a fallen double white oak at head of pond; N. 82 E. 62 po's to a stake by road; S. 23 E. 61 po's to three thorn bushes, cherry, & locust by said creek, & down same and crossing obliquely; S. 40 W. 87 po's to white oak on south side & down S. 88 W. 60 po's; N. 73 W. 60 po's to white & chestnut oak on bank, and leaving & with Mrs. Copeland S. 64 W. 130 po's to a white oak by old road; west 56 poles to a stake corner to & with Rob't Dickson; S. 84 E. 30 po's to a pine corner
249 to 380 acres of Banks', now Calwell's, & with S. 15 E. 40 po's to sugar by branch; N. 75 W. 26 po's to white oak on narrow ridge; S. 55 W. 21 po's to a red-oak sapling; S. 25 W. 32 po's to two white oaks; S. 75 W. 98 po's to two white oaks by a drain; S. 12 W. 24 po's to a white-oak sapling; S. 12 E. 18 po's to two white oaks; S. 17 E. 44 po's to a pine; S. 8 E. 18 po's to a pine & white oak; S. 30 E. 22 po's to pine & white oak; S. 35 E. 150 po's to pine and white oak; S. 70 E. 5 po's to two white oaks, black oak, & locust, corner to the Creigh tract, & with N. 52 E. 400 po's to a chestnut & black oak on a ridge; N. 63 E. 770 po's to pointer's corner, to & with Edwards' N. 44 W. 225 po's to the beginning, being the same land that was conveyed by John Bowyer, Calwell, & others to William H. Macfarland by deed dated Nov'r 22, 1853, & recorded in Greenbrier county in deed book No. 21, pages 605 to 608; also a tract of 2,800 acres lying on or near the line of the Chesapeake & Ohio railway in Alleghany county, Virginia, and is the same tract which formerly belonged to one Hoke; but it is expressly understood that the following lots are excepted from the operation of this conveyance, to wit: First, the family cemetery of the former proprietor of the White Sulphur Springs, containing about one-fourth of an acre; second, the
250 lot on which the Methodist church is located, and which has been conveyed to trustees for said church under a decree made in the suit aforesaid; and, third, the lot sold to the Right Reverend George W. Peterkin for the use of the Episcopal church, under a decree in said suit by the court aforesaid and for which no deed has yet been made; and it is further expressly understood and agreed that a lien is retained on all the property hereby conveyed to secure the payment of and until the five several bonds of $61,290 for the purchase-money aforesaid are fully paid and discharged:

To have and to hold the aforesaid real estate and premises, with all the right, title, and interest of the s'd White Sulphur Springs Company and all persons claiming by, through, or under said company, unto the said William A. Stuart, his heirs & assigns, forever.

Witness the following signature and seal.

A. C. SNYDER, [L. S.]
Special Com'r.

STATE OF WEST VIRGINIA, }
County of Greenbrier, } *ss:*

I, Mark L. Spotts, a notary public for the county aforesaid, do certify that A. C. Snyder, special commissioner, whose name
251 is signed to the foregoing deed, bearing date on the 17th day

of March, 1882, has this day acknowledged the same before me in my said county.

Given under my hand this 17th day of March, 1882.

MARK L. SPOTTS,
Notary Public.

THE STATE OF WEST VIRGINIA:

GREENBRIER COUNTY COURT, CLERK'S OFFICE,
April 10, 1882.

This deed was on this day presented in this office, and, with the certificates endorsed thereon, it is admitted to record.

Teste: MARK L. SPOTTS, *Clk.*

A copy.

Teste: CHAS. B. BUSTER, *Clerk.*

EXHIBIT.

"In the Circuit Court of the United States for the District of West Virginia, at Parkersburg. In Vacation. In Equity.

WILLIAM A. STUART
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY—WILLIAM W. GORDON & ISAAC H. CARRINGTON, Trustees.

Notice of this motion to all the defendants being proved,
252 and the petition of the plaintiffs praying that the court now proceed to act on the prayer of the bill for the appointment of a receiver being read, and all parties to this suit, plaintiff and defendant, having appeared and having been fully heard, it is ordered that A. L. Boulware, of the city of Richmond, be, and he is hereby, appointed by consent the receiver of all the estate, both real and personal, of the defendant company; that the said receiver, before entering upon the performance of his duties as such under this order, shall execute his bond, with sureties to be approved by the judge of this court and filed with the clerk thereof, in the sum of $50,000, conditioned for the faithful discharge of his duties in the premises; that upon the filing of such bond with the clerk of this court the said receiver shall proceed to take possession of all and singular the premises whereof he is hereby appointed receiver; he will make an inventory account of said property upon taking possession thereof and file said inventory with the clerk of this court; he will keep a full, clear, and accurate statement of all and singular his acts and doings in the premises, and file with the clerk of this court such account monthly during the term of such receivership. It is further ordered that all monies
253 coming into the hands of said receiver be deposited in some bank of deposit within the State of West Virginia to be approved by the judge of this court, to the credit of said receiver as such. It is further ordered that said defendant company and all persons whomsoever be, and they are, strictly commanded and en-

joined peacefully to deliver up and surrender to the said receiver all and singular the premises whereof he is hereby appointed receiver, and the marshal of this court is ordered to forthwith deliver the possession of said premises to said receiver.

And it is ordered that until further orders that the defendant company shall be allowed to conduct its business of hotel-keeping as it may deem best for the interests of said company and its creditors, and its leases and contracts for the proper conduct of its business already made shall be allowed by the receiver to stand; but the receiver shall collect and account for the receipts of the company, allowing the said company all expenditures necessary economically to conduct the business, and shall report his receipts and allowances monthly to this court.

Given under my hand this 13th day of April, 1883, at 10 o'clock a. m.

Teste: (Signed) HUGH L. BOND,
C't Judge.

Copy.

L. B. DELLECKER, *Clerk.*

254 A list of securities turned over by W. A. Stuart to the commissioners appointed by the United States district court at Charleston to sell the Greenbrier White Sulphur Springs, viz:

The Singleton debt, evidenced by twenty — of $5,000 each, constituting the 1st class in Comm'r Mathews' report of 21 April, 1876, $100,000.00.

Interest according to said report, $42,000.00.

Interest unpaid on principal, $——.

Interest on $36,000 of accumulated interest from 28 April, 1876 see decree of U. S. court of that date), $——.

Intermediate Judgments.

Class 2.

Bond No.	112,	& 7	coupons—	prin.,	$1,000.00.
"	114	"	"	"	1,000.00.
"	115	"	"	"	802.33.
"	113	"	"	"	1,000.00.

Class 3.

No.	104.	& 7	coupons—prin.,	332.27.
	103	"	"	1,000.00.
	102	"	"	1,000.00.
	101	"	"	1,000.00.

Class 4.

Bond No.	137	& 7	coupons—	prin.,	987.97.
"	100	"	"	"	140.77.
"	99	"	"	"	60.57.

255 Class 5.

Bond No.	67 & 7	coupons—	prin.,	319.87.
	90	"	"	1,000.00.
	91	"	"	1,000.00.
	92	"	"	1,000.00.
	93	"	"	1,000.00.
	94	"	"	1,000.00.
	95	"	"	1,000.00.
	96 & 6	coupons,	"	796.98.
	98	7 "	"	524.30.
	142	"	"	704.68.
	150	"	"	702.43.

Class 6.

Erskine coupons, detached from bond No. 2:

1 due Oct. 15, 1861, 1,310.92.
1 " " " 1862, 1,310.92.
1 " " " 1863, 1,310.92.
Interest on above coupons.

Erskine bond No. 3:

Jno. W. Johnston, trustee, per Mrs. J. C. Boyd.
Principal, $21,848.69.
Accrued interest, after maturity of the bond & not paid by rents, $——.

Jno. W. Johnston, trustee, order on Comm'r Mathews for arrears of interest for 1870, $310.92.

Rec'd of W. A. Stuart the above securities, which are applied first to the discharge of the three purchase-money bonds of said Stuart first falling due, given for the Greenbrier White Sul-
256 phur Springs property sold by the U. S. district court, at Charleston, the said bonds being for $61,290.00 ea. & bearing interest from March 31st, 1880, and which are this day delivered to said Stuart. The amount covered by this list of securities, after discharging the three bonds aforesaid, is to be by us credited on the 4th bond of said Stuart of like amount with each of the other three & bearing interest from same time.
Oct 20, 1883.

A. C. SNYDER.
JASPER Y. MOORE.
HENRY M. MATHEWS.
WM. A. QUARRIER."

257 The "deed" referred to in the last foregoing order is in the words and figures following, to wit:

"This deed, made this 17th day of March, 1882, between William A. Stuart and Ellen B., his wife, parties of the first part, and 'The Greenbrier White Sulphur Springs Company,' party of the second

part, witnesseth: That in consideration of the sum of three hundred & ninety thousand one hundred & ninety-four dollars and forty-four cents ($390,194.44) the parties of the first part do hereby grant & convey to the party of the second part, with special warranty, the following real estate, viz: A tract or boundary of land lying in the county of Greenbrier & State of West Va., containing about 7,000 acres, which was formerly known — 'The White Sulphur Springs Property,' and belonged to the White Sulphur Springs Co., and also the interest of said Stuart in a tract of 2,800 acres lying on or near the line of the Chesapeake & Ohio Railroad Company, in Alleghany county, Virginia, which formerly belonged to one Hoke, & afterwards was the property of the said White Sulphur Springs Co., and also all improvements, buildings, and appurtenances on or belonging to said tracts of land, which said tracts were purchased by the said
258 William A. Stuart at a sale made by commissioners acting under a decree of the district court of the United States for the district of West Virginia, rendered in the suit in said court in which C. S. Gay and others were plaintiffs and the White Sulphur Springs Company & others were defendants, and which said tracts of 7,000 acres and 2,800 acres were conveyed to the said William A. Stuart by A. C. Snyder, special comm'r of said district court, by deed dated this day, and reference is made to the said deed for the boundaries of said land and for more particular description thereof, and for this purpose the said deed of this date from A. C. Snyder, comm'r, to the said William A. Stuart is to be considered as though herein fully set out; and it is further understood that the same lots are excepted from the operation of this deed as are reserved in the aforesaid deed, viz., the cemetary belonging to the former proprietors, containing about one-fourth of an acre; the lot on which is the Methodist church, and the lot sold to the Right Rev. George Peterkin for the use of the Episcopal church; and it is further expressly covenanted that a lien is hereby expressly created, retained, and reserved on all of the property hereby conveyed to secure the payment of the balance of purchase-money due said Wm. A. Stuart
259 and remaining unpaid, which balance is payable as follows:

On the 1 day of Sept., 1882	23,110 22
On the 1 day of Sept., 1883	48,746 61
On the 1 day of Sept., 1884	61,249 17
On the 1 day of Sept., 1885	33,150 24
On the 1 day of Sept., 1886	39,171 42
On the 1 day of Sept., 1887	37,968 85
On the 1 day of Sept., 1888	36,766 30
On the 1 day of Sept., 1889	15,521 15
On the 1 day of Sept., 1890	57,540 41
On the 1 day of Sept., 1891	13,000 00
On the 1 day of Sept., 1892	13,000 00
On the 1 day of Sept., 1893	13,000 00
On the 1 day of Sept., 1894	13,000 00
On the 1 day of Sept., 1895	13,000 00
On the 1 day of Sept., 1896	13,000 00

On the 1 day of Sept., 1897	13,000 00
On the 1 day of Sept., 1898	13,000 00
On the 1 day of Sept., 1899	13,000 00
On the 1 day of Sept., 1900	213,000 00

Forward.

But it is further expressly agreed and covenanted that said reservation of lien shall not extend or apply to two acres of said land on which it is proposed to erect a hotel near the railroad depot, said two acres to be bounded on the south by the J. R. & Ka. turnpike, about opposite to the site of the hotel which was burnt in 1877, and shall be bounded on the east by the road now leading from
260 the depot into the grounds, and shall be laid off in such shape as will be convenient for the erection of a hotel; and it is further covenanted that the Greenbrier White Sulphur Springs Co. shall have as attached to said contemplated hotel the privilege of the use of water from the White Sulphur Spring for drinking purposes, independent of any sale under the lien herein reserved, and shall have the right, if they think proper, to lease or to convey such privilege as attached to the two acres in any lease or conveyance they may hereafter make of the same. There is also reserved and excepted from the operation of this conveyance & from the lien for purchase-money the right of Richard H. Dulany to have, occupy, and enjoy as heretofore two cottages erected on said Springs property at the expense of said Dulany; to have and to hold the said real estate and all improvements and appurtenances thereof, with all right, title, and interest of the parties of the first part and of all persons claiming by, through, or under them, unto the said party of the second part, its successors and assigns, forever.

Witness the following signatures & seals:

W. A. STUART. [L. S.]
E. B. STUART. [L. S.]"

261 VIRGINIA, } *To wit:*
Russell County, }

I, H. C. Stuart, a notary public in and for the county aforesaid, State of Virginia, do certify that W. A. Stuart & E B. Stuart, his wife, whose names are signed to the writing above, bearing date on the 17th day of March, 1882, have acknowledged the same before me in my county aforesaid, and the said E. B. Stuart being examined by me privily and apart from her husband, & having the said writing fully explained to her, she, the said E. B. Stuart, acknowledged the said writing to be her act & deed, declared that she had willingly executed the same, and does not wish to retra-t it.

Given under my hand this April 1st, 1882.

H. C. STUART, *N. P.*

THE STATE OF WEST VIRGINIA:

GREENBRIER COUNTY COURT,
CLERK'S OFFICE, *April 10th*, 1882.

This deed was on this day presented in this office, and with the certificate endorsed thereon it is admitted to record.

Teste: MARK L. SPOTTS, *Cl'k.*

A copy.

Teste: CHAS. B. BUSTER, *Clerk.*

262 I, Jasper Y. Moore, clerk of the district court of the United States for the district of West Virginia, do certify that the foregoing is a true transcript of so much of the record in the case of C. S. Gay & *als. vs.* The White Sulphur Springs Company & *als.*, pending in my said court at Charleston, as required by the appellant, including decrees, orders, reports, exhibits, &c., &c., in the above-entitled cause, wherein C. S. Gay & *als.* are plaintiffs and The White Sulphur Springs Company & *als.* are defendants, and said transcript contains all the orders and decrees entered in said cause.

In testimony whereof I hereunto subscribe my name and affix the seal of my said court, at Charleston, this 24th day of June, A. D. 1885, and the 109th year of the Independence of America.

{ Seal District Court United States, District of West Virginia, Charleston, W. Va. }

JASPER Y. MOORE,
Cl'k D. C. U. S., D. W. Va.

263 To the honorable judges of the Supreme Court of the United States:

Your petitioner, William A. Stuart, respectfully represents unto your honors that he is aggrieved by two decrees entered by the district court of the United States for the district of West Virginia, sitting at Charleston, in said district (which court, by special act of Congress, has circuit court jurisdiction in civil causes), in a certain suit in equity pending in said district court, wherein C. S. Gay & others are complainants and the White Sulphur Springs Company, a corporation, & others are defendants, one on the fifth day of January, 1884, compounding the debts theretofore reported in said cause against the said company as of the 15 day of October, 1875, and directing the commissioners, in distributing the proceeds of the sale of the company's property, to pay interest upon the interest of said debts from the date last aforesaid; and the other, entered on the 25th day of May, 1885, rejecting the petition of your petitioner for relief from the s'd decree of January 5, 1884, and directing a resale of the property of said company which had theretofore been purchased by your petitioner under a decree of sale made in said cause.

264 The following is a brief abstract of the proceedings in said cause relating to the decrees complained of:

The suit was commenced in the year 1868 as a general creditors'

suit to subject the real estate of said company to sale to satisfy the numerous liens thereon.

By decree of April 23d, 1868, the cause was referred to Henry M. Mathews to report the liens and the priorities thereof upon the company's property (page 45 of record).

The property of the company was rented out during the pendency of the litigation and said Mathews appointed commissioner to collect and disburse the rents in said decree of reference.

A lease had been made by the company a short time before suit was brought to Geo. L. & W. H. Peyton for five years at an annual rent of twelve thousand dollars, to be applied in payment of salary to the president and interest on the Singleton and Erskine debts, which lease the court recognized and carried out.

By decree of October 15, 1875, the said Mathews was directed to pay out of rents collected on account of accruing interest for that year on the principal of debts of classes No. 2, 3, 4, 5, & 6, as stated in reports of said commissioner before filed (page 81).

265 The said Mathews had filed two reports of liens and priorities Sept. 29, 1874, & Feb'y 25, 1875, respectively, which were recommitted to him by decree of April 28, 1875, with instructions (page 73 of record); and his final report of liens and priorities (which is found on pages 89 & following of the record) was filed on the 21 day of April, 1876, and confirmed on the 28 day of April, 1876 (pages 82 to 87); and by this decree the court also adjudicated that where holders of the coupon bonds of the company had severed and transferred their coupons the owners of such coupons were entitled to priority over the holder of the bonds and the coupons thereon not transferred; and further adjudicated that inasmuch as the Singleton debt was the first lien, and the sale of the property had been postponed in the interest of subsequent lien holders, and the payment of $36,000 of accumulated interest on said Singleton debt was consequently postponed, that this $36,000 of interest should bear interest from the date of the decree, viz., April 28, 1876.

On the 5th day of May, 1877, the court, without any further decree, adjudicating the debts of the White Sulphur Springs Company and requiring their payment, than the order before referred to, simply confirming Commissioner Mathews' report of liens

266 and priorities, decreed a sale of the real estate of the company, and appointed commissioners to execute the same. (See pages 131 to 139.)

By decree of May 4, 1878 (page 140), the court adjudicated that the interest on the coupon bonds of the said company, Nos. 1, 2, & 3, part of class No. 6, known as the Erskine debt for the year ending October 15, 1868, and that the interest on bond No. 4 for the years ending October 15, 1868, to October 15, 1877 (excepting certain credits mentioned), should bear interest as if evidenced by coupon bonds, inasmuch as the court was of opinion that the property of the company was ample to secure all the bonds, principal, and interest in said 6th class, as well as all prior liens; and a sale of the property had been postponed in the interest of subsequent lienors.

It will be observed that the debts reported in said sixth class,

known as the Erskine debts, were made up of three bonds of said company for the sum of $21,848.69 each, dated October 15, 1857, payable ten years after date, with interest coupons attached, which bonds fell due and the coupons for interest ended on the 15 of October, 1867; and a fourth bond in favor of Samuel C. Beard, adm'r, &c., for $907.67, bearing the same date & due at the same time as the Erskine debt. See trust deed of October 15, 1857, page- 26 & following of record.

267 By decree of August 2d, 1878 (page 145), the court, reciting "that it had been suggested that compound interest had improvidently been ordered to be paid on the Singleton mortgage and the Erskine mortgage," referred the matter to Commissioner Mathews to report at the next term whether such compound interest had been paid or ordered to be paid to any of said creditors.

This order of reference has never been executed.

The commissioners appointed to execute the decree of sale made a sale of the company's property on the 9th day of August, 1879, to A. F. Mathews for $300,000, which sale was excepted to and was set aside by decree of November 19, 1879. (See page 167 of record.)

Another sale was made by said commissioners of the company's property on the 31 day of March, 1880, at which sale your petitioner became the purchaser for the sum of $340,000, which sale was confirmed by a decree rendered May 4, 1880 (page 175), and the report of said sale is found on page- 177 to 181.

At an adjourned term of the court held on the 5th day of January, 1884, the commissioners who made the sale asked the court for instructions as to the proper manner of disbursing the pro-

268 ceeds of sale, and the court, by an order of that date, instructed said commissioners, in disbursing said proceeds and paying therewith the debts reported against said company, to calculate interest upon the aggregate amount of principal and interest of said debts, aggregated as of October 15, 1875, which is one of the decrees complained of.

On the 22d day of May, 1885, your petitioner filed a petition in said cause asking to have said order of January 5, 1884, set aside and rescinded and the instructions therein given by the court to its commissioners changed and modified.

Your petitioner, at the time Mathews' report was made up, had become the purchaser and assignee of the debts of the said company in various classes, as will appear by the aforesaid report of liens & priorities by said Comm'r H. M. Mathews, and also the principal of one of the Erskine bonds held by Samuel Price, trustee of Mrs. E. E. Crockett, and, after said report was closed and before the sale to your petitioner of March 31, 1880, your petitioner became the purchaser and assignee of the principal of the Erskine bonds held by J. W. Johnston, trustee of Mrs. Jane C. Boyd, and of the principal, coupons, and interest (except one coupon) of the Erskine bond held by John Echols, trustee of M. L. Gay, as will appear by the

269 aforesaid petition and exhibits therewith filed by your petitioner May 22, 1885.

And by decree rendered in said cause on the 1st day of March,

1882 (page 194), A. C. Snyder, who was appointed a special commissioner for the purpose, was directed to execute a deed conveying to your petitioner the property of said company purchased by him, retaining therein the vendor's lien for the unpaid purchase-money; and said Snyder was further "authorized and directed to settle with your petitioner at any time upon his application, so far as the bonds for the purchase-money have already matured or as the same shall hereafter mature, by crediting upon the said bonds the amounts to which the said William A. Stuart is entitled to credit for the liens held by him, as recognized by the previous decrees of this court establishing the order & priority of liens, and by receiving from him in cash so much of the amount of said lands as may be going to other lienholders; and the said A. C. Snyder is also authorized to cancel & deliver to said William A. Stuart any one or more of said bonds, whether the same have matured or not, on being satisfied that the said Stuart is then holder & owner of all the claims payable out of the proceeds of such bond or bonds." The said com-
270 missioners of sale, on the 3d day of June, 1884 (page 200), filed a report, which was styled "a report of settlement," with your petitioner, but which was in no sense a settlement, as appears on the face of the report, as the statement of the debts held by your petitioner, and for which they report he is entitled to credit on the purchase-money of the property, is made in two aspects—one, according to the decree complained of, of January 5, 1884, showing a balance due on the three first deferred instalments of the purchase-money of $32.50, and the other in accordance with the previous decrees in the cause, and which petitioner claimed was the proper statement of said debts, showing a balance due on said three first deferred instalments of purchase-money of $6,612.25.

It would appear, looking alone at the interest of your petitioner as a purchaser of the property, that the first statement of said commissioners is most favorable to your petitioner; but looking at the interest of your petitioner as a lienholder, and especially as the holder of the principal of the three Erskine bonds, reported in the 6th class, the principal upon which said statement is made and by which interest is computed upon interest from October 15, 1875, is most disastrous to your petitioner, as the proceeds of sale are not sufficient to pay the said bonds in full, and the
271 principal of said bonds being adjudged by the court subsequent in priority to the transferred coupons, will have to bear the entire loss caused by such payment of interest upon interest.

On the 12th day of May, 1885, the commissioners of sale filed a report reporting your petitioner in default in the payment of the two last bonds for the deferred instalments of the purchase-money for the property purchased by your petitioner, and a rule was thereupon awarded against your petitioner to show cause why said property should not be resold for the unpaid purchase-money (page 207).

Your petitioner filed an answer to said rule on the 25 day of May, 1885, which answer is found on pages 235 to 256, and on said 25 day of May, 1885, the court rendered the other decree complained of, pages 229 to 234, rejecting the aforesaid petitioner of your petitioner

to set aside the said decree of January 5, 1884, and to change & modify the instructions therein given by the court to its commissioners and decreeing a resale of the property for cash to satisfy the sum of $160,212.06, with interest from May 12th, 1885, & the costs of said rule.

272 Your petitioner respectfully assigns the following errors in said decrees:

1st. The decree of January 5, 1884, is erroneous in aggregating all the principal and interest of all the debts reported against the White Sulphur Springs Company as of the 15 day of October, 1875, as stated in said Commissioner Mathews' report, and making said aggregate an interest-bearing fund as of that date.

Nearly one-half of said aggregate is interest, and a large part of said aggregate is made of interest upon interest.

The court will observe that in the 6th class, in which your petitioner is especially interested, $32,278.98 of said aggregate is made up of unpaid interest coupons upon the Erskine bonds & $18,420.85 of said aggregate is made up of interest upon said interest coupons, and interest upon interest is thus made to bear interest in the absence of any contract between the parties and of any principal of law authorizing it, and more than $10,000 is thus exacted of interest upon the interest of said interest coupons, all of which will come out of the proceeds of sale that would otherwise be applicable to the principal of the Erskine bonds held by your petitioner.

The court by its decrees of April 28, 1875 (page 82), and of
273 May 4, 1878 (page 140), had adjudicated just how much of the interest on these debts should bear interest and from what time, viz., $36,000 of the Singleton debt from April 28, 1876; one year's interest on the Erskine debt from October 15, 1868, & the interest on the S. C. Beard debt of $907.67 for the years ending October 15, 1868, to October 15, 1677 (subject to certain credits), and gave special reasons therefor; and it was error in the court to reverse or modify the adjudication so made, especially after your petitioner had become the owner of liens affected by said adjudication and the purchaser of the property, with the right to use said liens in payment therefor, relying upon the adjudication aforesaid, and as the same had been adjudicated. See said decree of March 24, 1882 (page 194).

2d. The court erred in its aforesaid decree of May 25, 1885, in rejecting the petition of your petitioner to set aside the said decree of January 5, 1884, and to change and modify the instructions therein given by the court to its commissioners.

3. The said decree of May 25, 1885, is also erroneous in overruling the motion of your petitioner to quash and discharge the aforesaid rule for a resale, as the same is insufficient upon its face,
274 and no sufficient cause for awarding the same is shown.

4th. In decreeing a resale of the property upon rule after the court had parted with the title thereto and had conveyed the property to your petitioner, retaining a vendor's lien in the deed for the unpaid purchase-money.

Your petitioner respectfully submits that the court could not enforce its vendor's lien by the summary process of a rule, but only by an original suit in equity, prosecuted by its commissioners under its authority and direction.

5th. In decreeing the sale of the property upon rule, after it was made to appear that it had been conveyed by your petitioner to the Greenbrier White Sulphur Springs Company, after your petitioner had been invested with the legal title as aforesaid, and had been sequestered and placed in the hands of a receiver under the order and decree of Judge Bond, of the circuit court of the United States, at Parkersburg, West Va. (see page 257 of record), without the leave of said circuit court first being had and obtained.

6th. In decreeing a resale of said property for all cash.

275 7th. In aggregating the principal ($122,580) of the two last bonds & the interest ($37,632.60) and making said aggregate ($160,212.60) bear interest from the 12 day of May, 1885.

8th. In decreeing a resale for the full amount—principal and interest of said two last bonds—when it was made to appear in your petitioner's aforesaid petition & exhibits & in his answer to said rule that your petitioner was the owner of the principal of the Erskine bond held formerly by J. W. Johnston, trustee, and had turned the same over to the commissioners of sale as part payment on said purchase-money & had not received credit therefor, nor any part thereof, and your petitioner is entitled to credit on the two bonds aforesaid to the extent that said Erskine bond is entitled to share in the proceeds of sale.

9th. It was made to appear to the court in the aforesaid petition and answer that your petitioner had personally assumed the payment of the other two Erskine bonds, and thereby was subrogated to the rights of the former owners, who held the same only to secure the performance of said assumpsit on the part of your petitioner, and by the contract of your petitioner with said former owners

276 the amount he was to pay for said bonds had not fallen due and to the extent to which said bonds were entitled to share in said proceeds of sale it was error to decree a resale for said unpaid purchase-money.

The said district court refused to allow your petitioner an appeal from said decree of May 25, 1885, on the ground that the decrees in the cause determining the amounts, dignities, and priorities of the debts and directing sale of the property were all entered more than five years previous, and that said decree of January 5, 1884, was simply explanatory of a former decree. Your petitioner exhibits with this petition and assignment of errors a duly authenticated transcript of all the orders and decrees ever entered in said cause, and of such other pleadings and papers filed therein as have reference to the questions raised upon this petition, and your petitioner respectfully submits that said decree of January 5, 1884, instead of being explanatory of any former decree in the cause, is in direct conflict with and antagonistic to several former decrees rendered therein and the rights of lien holders as theretofore settled and adjudicated.

And for the foregoing and other errors apparent upon the
277 face of said record and of said decrees, your petitioner prays for an appeal from and supersedias to said decrees of January 5, 1884, and May 25, 1885, and that the same may be reversed, set aside, and held for naught.

And, as in duty bound, your petitioner will ever pray.

WM. A. STUART,
By W. J. ROBERTSON, *Solicitor.*

Upon examination of the foregoing petition and the transcript of the record accompanying the same the appeals from said decrees are allowed, and it is ordered that upon the filing of said record & opinion in the office of the clerk of the Supreme Court of the United States the appellant be allowed to execute a supersedeas bond, in the penalty of thirty thousand dollars, conditioned as required by law, such bond to operate as a supersedeas only when it shall have been presented to & been approved by me.

This July 2, 1885.

JOHN M. HARLAN,
Associate Justice Supreme Court of the U. S.

278 *Bond.*

Know all men by these presents that we, William A. Stuart and George W. Palmer, are held and firmly bound unto C. S. Gay & Margeret L., his wife; John Echols, trustee of the said M. L. Gay, and John W. Johnston, trustee of E. C. Boyd, in the just and full sum of thirty thousand dollars, to be paid to the said C. S. Gay & wife, John Echols, trustee of the said M. L. Gay, & John W. Johnston, trustee of E. C. Boyd, — certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrotors, jointly and severally, by these presents.

Sealed with our seals and dated this 9th day of July, in the year of our Lord one thousand eight hundred and eighty-five.

Whereas lately, at a district court of the United States for the district of West Virginia, sitting at Charleston, in said district, in a suit depending in said court between the said C. S. Gay & wife, John Echols, trustee of the said M. L. Gay, and John W. Johnston, trustee of E. C. Boyd, complainant, and The White Sulphur Springs Company *et al.*, defendants, two decrees were rendered in said cause against the said Wm. A. Stuart, one dated January 5, 1884, and the other dated May 25, 1885; and the said W. A. Stuart having been allowed an appeal from said decrees, and having obtained a certified transcript and filed a copy thereof in the clerk's office of the
279 said court to reverse the said decrees in the aforesaid suit, and a citation directed to the said C. S. Gay & M. L., his wife, John Echols, trustee of the said M. L. Gay, & John W. Johnston, trustee of E. C. Boyd, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said William A. Stuart shall prosecute said appeal to effect and answer all damages and costs if he fail to make his plea good, then the above obligaton to be void; else to remain in full force and virtue.

W. A. STUART, [SEAL.]
GEORGE W. PALMER, [SEAL.]
By WILLIAM T. CLARK,
His Attorney-in-Fact.

Approved, to operate & have the effect of a supersedeas.
July 9, 1885.

JOHN M. HARLAN.
Associate Justice, Sup. C't U. S.

(Endorsed:) "Filed July 15, 1885, in the clerk's office D. C. U. S., D. W. Va., at Charleston. Jasper Y. Moore, clerk."

I, Jasper Y. Moore, clerk of the district court of the United States for the district of West Virginia, do certify that the foregoing is a true and correct copy of a bond filed in my said court at Charleston in a cause therein pending, wherein C. S. Gay & others are plaintiffs and The White Sulphur Springs Company & others are defendants.

280 In testimony whereof I have hereunto subscribed my name and affixed the seal of my said court, at Charleston, this 16th day of July, 1885.

{Seal District Court United States, District West Virginia, Charleston, W. Va.}

JASPER Y. MOORE,
Clerk D. C. U. S., D. W. Va.

Power of Attorney.

George W. Palmer to William L. Clark.

"Know all men by these presents that I, George W. Palmer, do hereby constitute and appoint William L. Clark my true and lawful attorney-in-fact to sign, seal, acknowledge, and deliver, in my name and stead, any bond or bonds which may be necessary or proper or which may be required by any court or judge as the condition of allowing to W. A. Stuart an appeal from two decrees rendered by the district court of the United States for the district of West Virginia, sitting at Charleston, in said district, in a certain suit in equity pending in said district court, wherein C. L. Gay and others are complainants and the White Sulphur Springs Company, a corporation, and others are defendants, one of said decrees having been rendered on the 5th day of January, 1884, and the other on the 25th day of May, 1885.

281 And my said attorney-in-fact is further authorized, empowered, and directed, for me and in my name and stead, to sign, seal, acknowledge, and deliver any bond or bonds which may be required of said Stuart or may be necessary as a condition for staying further proceedings in said cause, by supersedeas or otherwise.

And I furthermore empower my said attorney-in-fact, for me and in my name, to sign any other papers or do any further act which may be needful and proper in the premises as fully as if done by me in proper person.

And I hereby ratify and confirm all the acts which my said attorney-in-fact may do in the premises.

Witness the following signature and seal, July 6, 1885.

GEO. W. PALMER. [SEAL.]

STATE OF VIRGINIA, *County of Washington*, } *To wit:*

I, Worley Musselwhite, a notary public in the county aforesaid, in the State of Virginia, certify that George W. Palmer, to me personally known, and whose name is signed to the writing hereto attached, bearing date on the 6th day of July, 1885, has acknowledged the same before me, in the county aforesaid, as his act and deed.

I further certify that the said George W. Palmer, being duly
282 sworn, made oath before me, in due form, that he is a resident of Saltville, in the county of Smyth, in the State of Virginia, and a householder therein; that he is worth more than thirty thousand dollars above all his debts, and that he owns unencumbered property in the said State of Virginia and county of Smyth, subject to execution, to the value of more than thirty thousand dollars.

In testimony whereof I hereto set my hand and attach my official seal this 6th day of July, 1885.

[L. S.] W. MASSELWHITE, *N. P.*

I, Jasper Y. Moore, clerk of the district court of the United States for the district of West Virginia, do certify that the last foregoing is a true copy of a power of attorney and certificate of acknowledgement, annexed to the first foregoing bond, filed in my said court, at Charleston, July 15, 1885.

In testimony whereof I have hereunto subscribed my name and affixed the seal of my said court, at Charleston, this 16th day of July, A. D. 1885.

{ Seal District Court United States, District West Virginia, Charleston, West Va. }

JASPER Y. MOORE,
Clerk D. C. U. S., D. W. Va.

283 In the District Court of the United States for the District of West Virginia, at Charleston, July 15, 1885. In Vacation.

C. S. GAY & Others
vs.
THE WHITE SULPHUR SPRINGS COMPANY & Others. } In Chancery.

This day Wm. A. Stuart presented his bond, with George W. Palmer, as surety, in the penalty of thirty thousand dollars, taken and

approved by John M. Harlan, associate justice of the Supreme Court of the United States, for an appeal and supersedeas from two decrees rendered in this cause, one on the 5th day of January, 1884, and the other on the 25th day of May, 1885, which bond is ordered to be filed; and the said Palmer having executed said bond by W. L. Clark, his att'y-in-fact, the power of att'y from said Palmer to said Clark is also filed.

I, Jasper Y. Moore, clerk of the district court of the United States for the district of West Virginia, certify that the foregoing order is a copy of an order from the records of my said court, at Charleston, in a cause therein pending, wherein C. S. Gay & others are plaintiffs and the White Sul. Spr'gs Co. & *als.* are defendants.

In testimony whereof I have hereunto subscribed my name and affixed the seal of my said court, at Charleston, this 16th day of July, 1885.

{ Seal District Court United States, District } { West Virginia, Charleston, West Va. }

JASPER Y. MOORE,
Clerk D. C. U. S., D. W. Va.

[Endorsed:] Dist. c't U. S., dist. W. Va. C. S. Gay *et als. v.* The White Sul. Spr'gs Co. & *al.* Copies of appeal bond, power of attorney, & order. Clerk's fees for copies, certificates, & seals, $2.35.

284 The United States of America to C. S. Gay & Margaret L., his wife, John Echols, trustee of said M. L. Gay, & John W. Johnston, trustee of E. C. Boyd, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the 2d Monday of October next, pursuant to an appeal allowed & filed in the clerk's office of the Supreme Court of the United States from two decrees of the district court of the United States for the district of West Virginia in a cause therein pending, wherein you are complainants & The White Sulphur Springs Company, a corporation, is defendant, but in which appeal W. A. Stuart is appellant and you are appellees, to show cause, if any there be, why said decrees rendered against the said appellant should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John M. Harlan, associate justice of the Supreme Court of the United States, this ninth day of July, in the year of our Lord one thousand eight hundred and eighty-five.

Allowed:

JOHN M. HARLAN,
Associate Justice Sup. C't U. S.

285 On this — day of ——, in the year of our Lord one thousand eight hundred and eighty-—, personally appeared —— —— before me, the subscriber, —— ——, and makes oath that he delivered a true copy of the within citation to —— ——.

—— ——.

Sworn to and subscribed the ——, A. D. 188–.

—— ——.

STAUNTON, VA., *July* 15, 1885.

As counsel for John Echols, trustee of Margaret L. Gay and for Mrs. Margaret L. Gay (C. S. Gay, her husband, having long since departed this life), I accept service of the within citation. This acceptance is without waiver of any rights of my clients had the process been served on them personally.

HUGH W. SHEFFEY.

BUCHANAN, VA., *July* 16, 1885.

Service of this process acknowledged as above.

JOHN W. JOHNSTON,
Trustee of Jane C. Boyd.

Endorsed on cover: West Virginia D. C. U. S. No. 255. William A. Stuart, appellant, *vs.* C. S. Gay and Margaret L. Gay, his wife, John Echols, trustee of said Margaret L. Gay, and John W. Johnston, trustee of E. C. Boyd. Filed July 24, 1885.

285 On this — day of ——, in the year of our Lord one thousand eight hundred and eighty—, personally appeared —— —— before me, the subscriber, —— ——, and makes oath that he delivered a true copy of the within citation to —— ——.

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Sworn to and subscribed the ——, A. D. 188–.

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S 4-518

IN THE SUPREME COURT OF THE

United States.

WM. A. STUART. *Appellant*,
vs.
C. S. GAY, A. F. MATHEWS, *et al. Appellees.* } IN CHANCERY.

BRIEF OF E. B. KNIGHT, ATTORNEY FOR THE APPELLANT.

THE KANAWHA GAZETTE PRINT, CHARLESTON.

IN THE SUPREME COURT OF THE United States.

WM. A. STUART, *Appellant*,
vs.
C. S. GAY, A. F. MATHEWS, *et al. Appellees.* } IN CHANCERY.

BRIEF OF E. B. KNIGHT, ATTORNEY FOR THE APPELLANT.

This suit was brought in the District Court of the United States for the District of West Virginia, sitting at Charleston, and having circuit court jurisdiction in civil causes, in March 1868, to enforce a trust deed or mortgage lien upon the real estate of the celebrated White Sulphur Springs Company in Greenbrier county, West Virginia, belonging to the devisees of Henry Erskine and designated in this brief as the Erskine debt.

The creditors of the company having liens and who were very numerous, were made parties to the bill and it became a general creditors' suit.

As appears by the allegations in the bill, (page 5 of printed record,) the White Sulphur Springs Company about two months before the institution of the suit had executed a lease to G. L. & W. H. Peyton of the company's property for the term of five years from April 1st, 1869, at $12,000 per year, directing Maury, the treasurer of the company to collect the rents, pay a salary of $1,000 to Caldwell, the president of

th e company, and apply the balance to the payment of the interest on the Singleton and the Erskine debts.

It will be noticed that the Erskine debt was secured by a deed of trust upon the real estate of the company, dated November 3d, 1841, (page 7 of record). And the Springs Company, on the 15 day of October 1857, executed another deed of trust to secure the same debt, with a large number of other debts, without changing the priority it had by the former deed of trust. (Page 12 of the record.)

By the last deed of trust the principal and unpaid interest of the Erskine debt were aggregated at the date of the deed (October 15th 1857,) amounting to the sum of $65,546.07, and three new bonds in the sum of $21,848.69 each were issued therefor to the executors of Henry Erskine (who had died in the meantime), payable ten years after date with six per cent. interest annually represented by interest coupons attached to the bonds. And all the other debts secured in said deed were so executed and coupon bonds issued therefor.

The District Court by order of April 23d, 1868, (page 21), referred the cause to H. M. Mathews to report the liens and their priorities upon the real estate of the company, declined to disturb the lease made to the Peytons, and directed said Mathews as its special commissioner to collect the accruing rents and apply the same as Maury was required to do by the terms of the lease.

Under the order of reference the aforesaid Commissioner Mathews made several reports to the Court which were several times recommitted to said Mathews for further report until, on the 21st day of April, 1876, the said Mathews filed a report of the liens upon the property of the said White Sulphur Springs Company and the priority of these liens, which report was confirmed by the court without exception by an order made April 28th, 1876. (Page 37 of record.)

This report of liens and priorities, marked No. 1, is found in the record, pages 40 to 72 inclusive.

The report designated as No. 2, in said order has no relation to the questions raised by this appeal, and is therefore omitted from the record.

The Singleton debt of $100,000 which was a first lien on a valuable part of the company's property, being secured by a

deed of trust of March 3d, 1836, did not have interest coupons attached. The interest however was paid up to July 1st, 1862, and was in default from July 1st, 1862, to July 1st, 1868, (six years), and thereafter paid out of the rents of the property pursuant to the terms of the Peyton lease, and the order of the Court before mentioned of April 23d, 1868, until July 1st, 1875, by clerical error printed 1874 in record. (See Mathew's report, pages 42 and 43.)

The decree which confirmed Mathews' report of liens and priorities also made the $36,000.00 of unpaid interest which had accumulated on the Singleton debt between July 1st, 1862, and July 1st, 1868, an interest bearing fund from the date of that decree (April 21st, 1876,) giving as the reason therefor, "that the interest on subsequent liens, represented "by coupons, were thus made to bear interest, that the prop- "erty was confessedly ample to pay the Singleton debt, and "the sale had been postponed from time to time on behalf "of these subsequent liens." (Pages 38 and 39 of Record.)

The cause continued without any further action of importance, except to continue the renting of the property, until the 5th day of May, 1887, when a decree of sale of the Company's property was rendered requiring ten per cent of the purchase money in cash and the residue in five equal annual installments with interest and good personal security for the first deferred payment. (Pages 74 to 78.)

By the decree of sale the Commissioners were authorized to receive from the purchaser as collateral security for the first deferred payment any evidence of debt belonging to the purchaser proved in the cause and which would be paid out of the proceeds of sale instead of personal security.

On the 4th day of May, 1878, no sale having been made, the Court entered a decree reciting that the interest on the three Erskine bonds designated No. 1, 2 and 3, respectively, for the year ending October 15th, 1868, and on the Beard bond designated as No. 4, from October 15th, 1868, to October 15th, 1877, (except 4 per cent. for the two years ending October 15th, 1875, and October 15th, 1877,) had not been paid, that the property conveyed was ample to pay these bonds, principal and interest, as well as all prior liens, and

that a sale of the property had been postponed in the interest of subsequent liens, and then adjudicating that this unpaid interest, being one year's interest on the three Erskine bonds falling due October 15th, 1868, and the interest on the Beard bond No. 4, from October 15th, 1868, to October 15th, 1877, less 4 per cent. paid in 1875 and 1877, should stand on the same footing and bear interest from the time when due as if evidenced by coupons.

And this decree further adjudicated that the assignees of the interest of said bonds were entitled to priority of payment over the bonds, coupons and interest not transferred, following the decision in the case of *McClintic* vs. *Wise's Administrator*, 28 Gratton, page 448. (Page 78 of Record.)

On the 2nd of August, 1878, the Court entered an order, upon suggestion being made that it had improvidently compounded the interest on the debts secured in the Singleton and Erskine mortgage, directing Commissioner Mathews to inquire into the matter and report whether any such compound interest had been paid or ordered to be paid, but no report was ever filed or further action taken in the matter. (Page 80.)

The Commissioners directed to sell the property reported at the November term, 1878, their failure so far to make a sale, and were directed to again advertise, and some slight modifications were made in the decree of sale, (page 8), and on the 13th day of October, 1879, these Commissioners reported a sale of the property to A. F. Mathews for $300,000.00, which report was filed and exceptions taken thereto, (pages 34 to 87 inclusive), and on the 18th day of November, 1879, this sale was set aside aud a re-sale ordered, (page 89.) And on the 31st day of March, 1880, the re-sale was had and the property sold to the Appellant, W. A. Stuart, for the sum of $340,000.00, and the report of this sale was filed and confirmed on the 4th day of May, 1880. (Pages 92 and 93.)

On the 1st day of March, 1882, the Court made an order directing Commissioner A. C. Snyder to execute a deed for the property to W. A. Stuart, reserving a lien for the unpaid purchase-money, and to credit said Stuart with liens held by him payable out of the proceeds of sale. (Page 101.)

On the 5th day of January, 1884, nearly four years after the sale the Court made an order directing the Commissioners, in distributing the proceeds of sale, to calculate interest upon the principal and interest of the debt reported aggregated as of the 15th day October, 1875, to which date Commissioner Mathews had computed interest in his report, (page 102,) which is one of the decrees appealed from.

On the 12th day of May, 1885, three of the commissioners of sale filed a report stating that W. A. Stuart had failed to pay the two last installments of the purchase money, and upon this report the court awarded a rule against the purchaser returnable to the 23rd day of May, 1885, to show cause why the property should not be re-sold for the unpaid purchase money. (Page 109).

On the 23rd day of May, 1885, the said Stuart presented a petition with some exhibits, for rehearing of the decree of January 5th, 1884, aggregating and compounding the principal and interest of the debts reported against the White Sulphur Springs Company as of October 15th, 1875, and that the same might be vacated and set aside, (pages 110 to 115 of record). And on the 25th day of May, 1885, the court rendered a decree rejecting said petition and confirming said order of January 5th, 1884. Overruling Stuart's motion to quash and discharge the rule before mentioned, filing his answer to said rule, adjudicating that the two last installments of the purchase money, amounting to the sum of $160,212.06, were wholly due and unpaid, and directing a resale for cash of the property purchased by Stuart, for this unpaid purchase money; the decree then makes the following provision: "And it appearing from the deed executed by W. A. Stuart "to the Greenbrier White Sulphur Springs Company and "*which is now here filed as an exhibit in this cause*, that the "said Stuart in conveying the said 7,000 acres to said com- "pany did not retain any lien for his purchase money on a "certain two acre part of said 7,000 acres particularly de- "scribed and defined in said deed, it is further adjudged, "ordered and decreed that said commissioner shall sell the "said 7,000 acres the said White Sulphur Springs property "exclusive of said two acres which shall not be sold unless it "shall hereafter prove necessary and until the further order "of the court."

This decree and the answer to the rule with exhibits referred to therein are found on pages 118 to 131 inclusive of record.

The appeal is also taken from this last decree.

Mr. Stuart sustains two relations to the suit, viz., a purchaser of the property under the decree of sale, and a creditor of the Springs Company to a large amount, entitled to a share in the proceeds of sale, and he takes this appeal in both relations.

The errors complained of are so fully set forth in Mr. Stuart's petition for a rehearing of the decree of January 5th, 1884, commencing on page 111 of printed record, and in his answer to the rule to show cause why the property should not be resold for the unpaid purchase money, commencing on page 120, and in his petition for an appeal and assignment of errors, commencing on page 132 that an extended brief is not deemed necessary.

The rule for resale against the appellant should have been quashed and discharged pursuant to his motion of May 25th, 1885.

The rule was issued May 12th, 1885, returnable to May 23rd, 1885, but on the return day the rule was not docketed and no notice was taken thereof, and no proceedings could be afterwards had on this process. A rule was docketed on the 22nd day of May, 1885, erroneously assuming that to have been the return day, but such a proceeding had upon this process before it was returnable was simply void and could not affect the defendant's right.

He was required by the rule to show cause on the 23rd day of May why a resale of the property should not be had.

On the 23rd day of May, the return day of the rule, no action is had upon the rule by the court and no notice is taken thereof. The defendant had a right to assume that the proceeding was abandoned, and could not be required to answer or show cause against the rule at any subsequent day.

While it is true the defendant appeared and answered the rule he did not do so until compelled by the courts overruling his motion to quash and discharge the rule because the return day had passed and no action was had.

That the premature action was void and the subsequent action unauthorized, see *Ballard* vs. *Whitlock*, 18 Gratton, page 235.

And that filing answer after the motion to discharge the rule was overruled, did not waive the error, see *Harkness* vs. *Hyde*, 98 U. S. Reports, page 476.

The court erred in decreeing a resale of the property in this cause upon a rule but should have directed its commissioners to proceed by original bill if any proceedings were found necessary.

We do not find any adjudication settling the practice in the United States courts as to the proper proceedings to be taken to collect the deferred installments of purchase money when judicial sales are made on credit and the purchaser is in default.

But the practice in the State courts of Virginia and West Virginia has been well settled by the courts of last resort.

In Reed, *Guardian* vs. *Clarkson*, 15 Grattan, page 288, the Supreme Court of Virginia held, *where the title to the land was retained by the court as security for the payment of the purchase money*, the deferred installments might be collected by a decree of re sale upon a rule to show cause why such a re-sale should not be had.

This is the leading case in Virginia, and it was doubtless upon the authority of this case that the like proceedings were taken in the case now before the Court. But in that case the practice was qualified by this clause in the opinion: "I do not mean to say that in all cases of the kind the pro-"ceedings should be by a rule rather than by a bill."

"*It is not difficult to conceive of cases in which there* "*might grow up or be developed between the direct parties* "*to the cause and the purchaser, equities of a character such* "*as to require that they should be discussed and considered* "*upon regular and formal pleadings, original or supple-*"*mental.*"

We respectfully submit, if the learned judge was right and it was possible to conceive of any such equities, they had been developed in this case and were presented to the Court in the answer made by the purchaser to the rule.

Stuart had acquired and turned over to the commission-

ers the entire indebtedness allowed in the first, second and third classes, all in the fourth class except two small bonds, Nos. 126 and 130, and all in the fifth class except one small bond, No. 125, and was entitled to credit therefor on his purchase money, pursuant to the order of the court of March 1, 1882, on page 101. (Compare the receipt given to Stuart by the commissioners, pages 128 and 129, with Mathews' report pages 42 to 45.)

These liens had substantially discharged the three bonds for the purchase money first falling due, and the proceeds of the two last bonds were almost entirely applicable to the debts in the sixth class, which was, with one small exception, made up of the Erskine bonds, coupons and interest. And although under the order of the court the detached and transferred interest coupons and accrued interest thereon were entitled to payment before the principal of the bonds, it was palpable, nevertheless, that a large amount of the unpaid proceeds of sale would be applicable to the principal of the Erskine bonds.

One of these bonds Stuart owned outright by assignment from J. W. Johnston, trustee, made March 15, 1876, and on which he had made a large payment, as acknowledged in the assignment. (Page 115.)

By a contract with Samuel Price, trustee, as to another of said bonds, made April 23, 1875, Stuart agreed to make the property bring a sufficient price to cover the bond, or personally assume its payment and the annual interest thereon, and in condition of this agreement Stuart was to control the debt and have ten years in which to pay it, when the property was sold. (Page 117.)

And by contract with John Echols, trustee, of March 31, 1880, the day of the sale, Stuart agreed to bid a sufficient sum to cover the remaining bond or make good the deficiency, and when, by the terms of sale and the priorities of debts as established, this debt was reached, Stuart was to have five years thereafter in which to pay it, with annual interest, less an abatement of $1,500.00, giving his own obligations, satisfactorily secured, therefor. (Page 117.)

Now, as before stated, these three entire bonds which Mr. Stuart had so arranged with the several owners thereof, were entitled to share largely in the unpaid purchase money, if they would not be entirely discharged thereby. None of

the former owners of the bonds with whom Mr. Stuart had so arranged them, were making any complaint or moving at all in the matter of a re-sale; the court, upon the said report of the commissioners that the last installments were due and unpaid, of its own motion ordered the rule and decreed the re sale.

As to Price and Echols, trustees, they had made such a contract with the purchaser, in order to get him to bid up the property; that the purchase money applicable to their two Erskine bonds was not due, and they had no right to call for payment. And I respectfully submit, that it was error for the court, in this summary way, on its own motion and of its own accord, to decree a re-sale of this property for cash, for the entire two last installments, amounting to over $160,000.00, when the purchaser showed that he controlled the debts entitled to a very large part thereof, and by contracts with the owners, founded on the best of considerations, was entitled to further time for payment; that in the language of the court, in *Reed, guardian* vs. *Clarkson*, such equities had developed between the purchaser and the parties who were plaintiffs in the cause, "as "to require that they should be discussed and considered "upon regular and formal pleadings, original or supple-"mental," and the purchaser protected from a decree of re-sale, for cash, for a large amount of purchase money which the creditors, entitled thereto, had agreed to give him further time to pay, in consideration that he would increase the bidding and make the property pay their debts.

In the case of *Reed, Guardian*, vs. *Clarkson*, the Court had retained the title to the land as security for the purchase money and the adjudication made in that case that ordinarily the collection of purchase money in default could be enforced by the summary process of a rule and decree of re-sale must be based on this fact.

In the case at bar the Court had ordered its Commissioner Snyder to execute a deed to the purchaser for the land sold. (page 101.) The Commissioner had executed and delivered this deed, (page 124, &c.) And the purchaser had conveyed the property the very day he got his deed from the Commissioner, (March 17th, 1882,) to the Greenbrier White Sulphur Springs Company, (page 129.)

The Court in rendering the decree of re-sale, took cognizance itself of this last deed and made it part of the record in the cause.

When the Court making the sale has conveyed the title to the purchaser retaining a vendor's lien for the unpaid purchase money the Supreme Court of West Virginia has expressly decided in *Glenn* vs. *Blackford*, 23d W. Va. Reports 102, that the practice is to file an original bill to enforce the lien for the unpaid purchase money, and that it would be necessary if the purchaser had sold to another to make this vendee a party to the suit. The Court in its opinion says:

"The usual and better practice is for the Court always to "retain the legal title in confirming a judicial sale, so that "should the purchaser fail to pay the deferred bonds, a rule "might speedily issue against him, the amount of the balance "ascertained, and a re-sale ordered. In such case no new "suit or supplemental bill in the same suit is necessary, and "the costs are less, and the end more speedily reached; but "sometimes the Court, as in the case here, confirms the sale "and orders the *legal* title to be conveyed to the purchaser "retaining a lien for the residue of the purchase money. "Where this is done, and the purchaser fails to pay the bonds "as they fall due, it is the practice to file an original bill to "enforce the lien for the purchase money, in which case it "would of course be necessary to make defendants all the "parties interested in that proceeding, the purchaser and his "vendees, if he had sold the land or any part thereof, and the "equities being settled between them, the land would be de-"creed to be sold according to the equities between the par-"ties, and the court could then order the legal title to be made "to the purchaser at said sale. If the original suit were still "pending in court for any purpose, in a case where the legal "title had been conveyed to the purchaser, the same result "might be reached by filing a supplemental bill in that cause, "making the defendants thereto the purchaser and his ven-"dees, if any."

The Greenbrier White Sulphur Springs Company had acquired the title to the property, and before it could be sold under a vendor's lien prior to their title, were entitled to a day in court and an opportunity to contest the amount due on that lien.

The Court erred in decreeing a re-sale of the property when the fact was established that the United States Circuit Court at Parkersburg had seized all the property real and personal of the Greenbrier White Sulphur Springs Company, the vendee of the purchaser, and put its receiver, A. L. Boulware, into possession thereof two years before, (page 127.)

While another court of competent jurisdiction had possession of the property through its receiver, no valid sale could be made. *Wiswall* vs *Simpson, et al.*, 14 Howard, page 52.

The Court erred in its decree of January 5th, 1884, (page 102 of record,) in making an order eight years after the Commissioner's report of liens and priorities was filed and confirmed directing the Commissioners of sale in distributing the proceeds of sale to aggregate the principal and interest of the debts stated in Commissioner Mathews' report as of the 15th of October, 1875, and compute interest on this aggregate from the day last named.

There was no law precedent or practice for any such compounding of interest: in fact the court in two former orders had practically adjudged it could not be done. In the decree confirming the Commissioner's report (page 38), it had decided that the interest in arrears on the Erskine debt should bear interest, not from October 15th, 1875, but from the date of the decree, April 21st, 1876. And by its decree of May 4th, 1878, (page 78), it also decided that a small amount of interest on the Erskine debt should bear interest from the time when due, but in both of these cases it gave special reasons for the adjudication, and the creditors had a right to infer that as these two cases were especially excepted by the Court and especial reasons given therefor there would be no further compounding of interest.

And both of these exceptions were made before the sale and before it was ascertained what the property would bring so that any creditor affected thereby could still protect himself at the sale.

But by the sweeping order of January 5th, 1884, made nearly four years after the sale, and after the appellant had acquired part of the principal of the Erskine debt and entered into contracts to make the property bring a sufficient amount to pay the residue or become personally liable therefor not only $49,108.82 of interest upon the debts in the second,

third, fourth, fifth and sixth classes is made to bear interest from October 15th, 1875, but $23,615.79 of interest upon the interest of the said debts is made to bear interest from the same date.

The Supreme Court in *Story* vs *Livingston*, 13 Peters, page 359, has laid down the rule for the computation of interest, viz., "compute interest whenever a payment is made and apply the payment to the extinguishment of interest then due and the excess, if any, to diminish the principal, but no interest is to be added to the principal so as to produce interest.

And the Supreme Court of Virginia where the debts were contracted has adopted the same method of computing interest.

Lightfoot vs. *Price*, 4 Henning & Mumford's Reports, page 431.

Grimm vs. *Ingersoll*, 11 West Va., page 549.

Lamb vs. *Cecil*, 5 W. Va. 228, page 8.

Interest is regulated by law and contract, and the rate per cent. and method of computing is not a matter of judicial discretion. And the court had no more right to compound the interest after the filing of the commissioner's report, than the commissioner had in making up his report.

It may be claimed that the following provision in the 16th section of chapter 131, of the Code of West Virginia, controlled the court and authorized the compounding made by the decree:

"When there is a recovery on a bond conditioned for the "payment of money, as well as in all cases where a judg- "ment or decree is rendered or made for the payment of "money, it shall be for the aggregate of principal and inter "est due at the date of the verdict if there be one, otherwise "at the date of the judgment or decree, with interest thereon "from such date, except in cases where it is otherwise pro- "vided."

But the statutes of West Virginia cannot control the practice or dictate the form of decree on the equity side of the United States Court.

And if the statute did control the court, it was in effect an express prohibition against such a decree.

The statute provides that when a decree is rendered or

made for the payment of money, it shall be for the aggregate of principal and interest *due at the date of the decree*, with interest thereon from that date.

Such a provision is surely a prohibition upon the court from rendering a decree for the payment of money which aggregates principal and interest *nine years before the date of the decree*, with interest from the time of the aggregation.

The Supreme Court of West Virginia has construed this statute and expressly held that such a decree was error.

See *Lamb* vs. *Cecil*, 25 W. Va., page 288, before cited.

In this suit no decree was ever redered against the debtor, the White Sulphur Springs Company, for the payment of any of these debts, and consequently there never was any decree in the case by which, under the statute of West Virginia, (if that statute had any effect upon this suit), there could have been an aggregation of principal and interest, and the whole made an interest bearing fund.

Commissioner Mathews filed his report of the liens and priorities thereof upon the company's property, on the 21st day of April, 1876.

In this report he simply states, as he had been required to do, the amount of the debts proved before him, who owned them, how much was principal and how much was interest, and the order of priority in which they stood as liens upon the company's real estate.

And the decree of the court upon this report was simply this:

"It is adjudged, ordered and decreed, that the report of "Commissioner Mathews, marked No. 1, and filed in open "court on the 21st day of April, 1876, and the report of same "commissioner, marked No 2, filed this day, to neither of "which are there any exceptions, be confirmed." (Page 37.)

And this was absolutely all there was in the decree about the report and the debts therein reported, except the provision with regard to making the overdue interest on the Singleton debt an interest bearing fund.

And we respectfully submit, that this was in no sense a decree for the payment of money within the meaning of the West Virginia statute.

It was simply an adjudication by the court that the state-

ments in the commissioner's report as to the debts against the White Sulphur Springs Company, how much was principal, how much was interest, who were the owners and their respective priorities, were correct, and should be so treated and considered as the basis of the future action of the court.

A decree for the payment of money under the West Virginia statute, must be an adjudication by the court of a certain exact sum *due, including principal and interest at the date of the decree*, and an order commanding the debtor to pay the same to the creditor.

Commissioner Mathews' report computes interest to October 15, 1875, and the decree confirming the same was rendered April 28, 1876. Now, there can be no pretense that there was any adjudication in this decree of the aggregate of principal and interest, *as of the date of the decree*, of any of the debts against the company, and making the aggregate an interest bearing fund from that date. And yet this is the only compounding of interest the West Virginia statute permits, and any other is illegal and erroneous.

See *Lamb* vs. *Cecil* before cited.

We most respectfully insist that the decree of January 5, 1884, attempting to aggregate the principal and interest of the debts stated in Commissioner Mathew's report as of the 15th of October, 1875, and make this aggregate bear interest from that date is illegal and erroneous and in direct violation of the decision of the United States Snpreme Court and the Supreme Courts of Virginia and West Virginia, and in palpable violation of the local statute.

From computations hereinafter made it will be seen that the proceeds of sale, however interest may be computed, will be exhausted upon the debts of the sixth class in Commissioner Mathew's report composed with one very small exception of the Erskine debt.

By the decree of May 4th, 1878, the interest coupons and installments of interest on the Erskine debt which had been assigned were given priority of payment over the principal and installments of interest not assigned. (Page 78.)

The coupons and installments of interest on the bond held by Johnston, trustee, up to October 15th, 1875, had been so assigned, and also on the bond held by Price, trustee, so that

Stuart only acquired the principal of those bonds with interest from that date. (Pages 116 and 117). Who had become the owner of all these coupons and installments of interest does not appear by the record except it is shown by Mathew's report (page 46) that A. F. Mathews owned four of these coupons belonging to the Price bond, and one belonging to the Johnston bond, and John Stuart owned one belonging to the Echols bond, and six belonging to the Johnston bond, and R. Crockett owned one belonging to the Price bond.

Now by compounding the interest as the court directed in the decree of January 5th, 1884, and the proceeds of sale would pay all of the coupons and interest on coupons on the Erskine debt which had been assigned and so entitled to priority of payment under the decree of the court and a large part of the principal of the debt held by the appellant, W. A. Stuart, the deficiency as shown by the computation hereinafter made being almost $20,000. And by calculating simple interest without compounding, and the proceeds of sale would just about pay the entire Erskine debt. The computation hereinafter made shows that it would pay the Erskine debt and leave a surplus of $243 but there would doubtless be items of cost accrued since the sale that would more than exhaust this surplus and in fact the extra allowance made to Commissioners Snyder, Mathews, Moore and Quarrier by order of November 26th, 1883, (page 102) would more than exhaust it.

But simply stated the facts and figures are substantially as follows:

Compounding the interest as directed by the court by its decree of January 5th, 1884, and the proceeds of sale will not pay the Erskine debt by $20,000.00. Calculating simple interest and not compounding as we insist the law requires, and the proceeds of sale will pay the entire Erskine debt as was intended when the property was sold and as the purchaser agreed should be done with Price and Echols, trustees. And it is very apparent that to the extent the proceeds of sale fail to pay the Erskine debt the appellant is the loser *and the entire loss is his* as he holds that part of the debt which is postponed in payment.

While it is true that the appellant by the court's method of compounding interest obtains something more on the debts held by him in classes 2, 3, 4 and 5 as shown in Com-

missioner Mathews' report than he would by the computation of interest without compounding, yet every dollar of gain in this respect is simply so much taken from the fund that would otherwise go to him on the Erskine debt. And so actually he does not gain a dollar by such compounding, but on the other hand he loses about $20,000.00 which is absorbed in the compound interest that under the court's decree will be paid to other creditors.

To illustrate: The interest on the interest coupons on the Erskine bonds held by Price and Johnston, trustees, amounted October 15th, 1875, to $6,056.45 on each bond and to $12,112.90 on both of these bonds as shown by Commissioner Mathews' report, (page 46).

All of which had been transferred to others and so entitled to priority of payment over the bonds themselves as acquired by the appellant. And the compound interest on this $12,112.90 of interest from October 15th, 1875, to March 31st, 1884, the earliest date at which it could be reached from the proceeds of sale amounts to over $6,000.00. And as before shown every dollar of this compounded interest by the order of January 5th, 1884, is taken from the fund that would otherwise be applicable to the payment of the principal of the Erskine bonds belonging to the appellant.

It may be suggested that the petition to re hear and vacate the decree of January 5th, 1884, was not filed in season under the equity rules of the Court, but as the decree of January 5th, 1884, was itself an appealable decree, and this appeal was taken therefrom in good time, the petition and proceedings thereon cannot affect the right of the appellant to redress from that decree by this appeal.

The Court below refused an appeal upon the ground that the decree of January 5th, 1884, was simply explanatory of a former decree, and that the rights of the parties and amounts, dignities and priorities of the debts were determined by decrees made more than five years before.

While there were numerous side issues and controversies in the case and the papers relating solely to those are omitted from the record as far as possible, the record nevertheless, as shown by the certificate of the Clerk, contains all the orders and decrees that were ever entered in the cause. And it is very evident from an inspection of these orders and decress,

that the Court in its above order refusing the appeal, must have referred to the decree of April 28th, 1876, confirming Mathews' report of debts and priorities as the decree which settled the rights of the parties, amounts, dignities and priorities of the debts, and was explained by the decree of January 5th, 1884, as there is no other decree in the record that makes any attempt to determine the amounts, dignities and priorities of the debts; and it is also very evident that neither the Court or counsel supposed for a moment that the effect of the decree of April 28th, 1876, was to aggregate the principal and interest of the debts reported by Commissioner Mathews, and make this aggregate an interest bearing fund from the 15th day of October, 1875, until this application was made for an appeal.

Otherwise, why should the decree of April 28th, 1876, make special provision for special reasons for the payment of the unpaid interest on the Singleton debt from the date of the decree if the legal effect of the decree itself was to compound all interest from a date seven months anterior to the date of the decree?

Why should the parties holding the Singleton debt or the defaulted interest thereon, and their counsel apply for and be content with a provision giving them interest on this defaulted interest from the date of the decree if it was ever supposed for a moment that the legal effect of the decree of confirmation was to give them interest on this interest for seven months anterior?

Why should counsel apply for and the court make a special provision May 4th, 1878, (page 78), six years after the decree of confirmation was rendered for the payment of interest on a portion of the defaulted interest on the Erskine and Beard debts and give special reasons therefor if any one connected with the cause, court or counsel had ever conjectured that this decree of confirmation had already adjudicated the question of interest and made all interest an interest bearing fund from October 15th, 1875?

Why should the court in those special cases providing for the payment of interest on interest give special reasons and set forth special equities for making such provisions if the legal effect of its decree of confirmation was to make all the interest on all the debts reported by Commissioner Mathews

an interest bearing fund for seven months before the decree of confirmation was rendered?

It will be noticed in Commissioner Mathews' report (page 46) that interest is only computed on the principal of the Erskine debt up to October 15th, 1868, because the rents had paid the interest on that debt from that date to the date of the report, but the interest on the coupons on that debt not having been paid is computed to October 15th, 1875, the same as the other debts stated in the report.

We submit the following statement which is approximately correct showing that the proceeds of sale would discharge the entire debt in the 6th class including principal and interest of the Erskine debt computing interest without compounding as the appellant claims should be done, and as we insist the adjudications of the court of last resort require, and also showing that the proceeds of sale will fail to pay the principal of the Erskine debt by almost $20,000.00 if the interest is compounded as the court by its decree of January 5th, 1884, directed its commissioners to compound it in making distribution.

We have taken as the basis of this computation the statement filed by the commissioners of sale with their report showing distribution of the cash payment and three first bonds for the purchase money which we assume to be correct, (pages 104 to 107 inclusive).

In a statement made by commissioners of sale the three bonds of the purchaser first falling due, with interest to October 15, 1883, (see printed record, pages 106 and 107) amount to, $222.942 37

They apply to this amount the following liens:

1. Singleton or first lien,	$158,922 55	
2. Various liens prior to class 6,	48,519 14	
3. Three coupons of class 6,	8,888 03	
And bring down a balance unpaid on the three first bonds of	$6,612 65	—$222.942 37

The commissioners of sale in this statement (pages 106 and 107 printed record), have adopted the plan of calculating the liens on the basis of simple interest and the present state-

ment extends the settlement on the same plan so as to embrace the two remaining purchase money bonds.

Dr.

Balance of purchase money due on the three first bonds as per statement above,		$6,612 65
Interest to October 15, 1885,		793 52
Principal of the two remaining purchase money bonds,		$122,580 00
Interest on last naned bonds from March 31, 1880, to October 15, 1885		40,757 45
		$170,743 62

Cr.

By intermediate judgments, being bonds 126, 130, 125, and 147 with interest to October 15, 1875. See Commissioner's report, pages 44 and 45,	$4,375 96	
Interest on principal and coupons to October 15, 1885,	1,712 50	
Amount of class 6. See printed record, page 46,	117,153 57	
Interest on $66,453,74, principal of this class 10 years to October 15, 1885,	39,872 20	
Interest on coupons in class 6, amounting to $27,910.54	16,746 30	
	$179,860 53	
Less the 3 coupons in class 6 applied to the 3 first bonds by the Commissioners of sale and interest to October 15th, 1883, $8,888.03. Interest to October 15th, 1885, $471.89	$ 9,359 92	
	$170,500 61	
Balance unpaid of purchase money	243 01	—$170,743 62

A statement calculating the liens on the basis of compounding interest as of October 15th, 1875, as required by the decree of January 5th, 1884, is now submitted to show the difference in result by the different methods.

On pages 104 and 105, printed record, the Commissioners of sale make the 3 purchase money bonds first falling due amount to $222,942 37, as of October 15th, 1883.

By compounding interest they make the debts turned in amount to	$222,909 87	
And show a balance due on the three bonds	32 50	—$222,942 37

Dr.

The above balance brought down	$ 32 50
Interest on this balance two years	3 90
Amount of the two remaining bonds	122,580 00
Interest from Mar. 31st, 1880, to Oct. 15th, 1885	40,757 45
Deficiency in purchase money to pay class 6	19,873 07
	$183,246 92

Cr.

By bonds 125, 126, 130 and 147, Comr's report, pages 44, 45	$ 4,375 96
Interest on this aggregate ten years	2,625 60
Amount of liens in class 6	117,153 57
Interest on same ten years to October 15th, 1885	70,292 10
	$194,447 23
Less three Erskine coupons turned in $10,360 31, (see page 5,) prin. and int. on $7,000 31, thereof $840 00, two years	11,200 31
	$183,246 92

It will thus be seen, that by the first statement herein submitted, there is a surplus of purchase money, after paying class 6 entire, of $ 243 01

While the second statement shows a deficiency of purchase money to pay class 6, of 19,873 07

This makes the difference in the two methods. $20,116 08

As before stated, there are probably some items of costs to be provided for out of the purchase money, which will reduce somewhat the amount of proceeds applicable to debts. And there is also a small compounding of interest on the Erskine and Beard debts, by the decree of May 4,

1878, (page 78) which it is now perhaps too late to correct by this appeal, and which is not noticed in the foregoing computation, but neither of these would materially affect the difference shown in the foregoing computation between applying the proceeds of sale to the payment of the debts, with simple interest, and applying the same proceeds to the payment of the same debts, compounding the interest, and, to a large extent, compounding interest upon interest.

We also submit, by way of illustration, a statement showing how A. F. Mathews, one of the creditors, holding claims in the second, third, fourth, fifth and sixth classes, by assignment, as shown in Commissioner Mathews' report, is benefited by this order of January 5, 1884, compounding interest and interest upon interest.

STATEMENT

Showing the gain of A. F. Mathews by compounding interest on his debts having priority over the principal of the Erskine debt, in class 6:

Mathews' debt at simple interest:

In class 2, two bonds		$2,000 00
In class 5, two bonds		1,319 87
		$3,319 87
Interest from Oct. 15, 1860, to May 31, 1883		4,473 25
Interest on seven coupons from maturity, to March 31, 1883		1,561 34
		$9,354 46
In class 6, five coupons	$ 6,554 60	
Interest on coupons from date of maturity to March 31st, 1883	7,022 89	—$13,577 49
Beard debt mentioned in class 6, but superiority for it claimed by Mathews over class 6 with all items of interest to March 31st, 1883		$ 2,552 46
		$ 25,484 41

The same debts compounded:

Class 2	$ 4,354 40	
Class 5	2,910 54	
Class 6	10,598 30	
Class 6, Beard debt	1,976 07	
Interest from Oct. 15th, 1875, to March 31st, 1883	8,977 94	
A. F. Mathews' gain		3,332 84
	$ 28,817 25—	$ 28,817 25
A. F. Mathews in his exception (page 108 of record) claims $3,000.00 of two other coupons of class 6. This, if sustained, would increase Mr. Mathews' gain $720.87, making his total gain		$ 4,053 71

We most respectfully submit that the decree of resale and also the decree of January 5th, 1884, should be reversed and set aside at the costs of the said A. F. Mathews and other creditors benefitted by such compounding of interest, and at whose instance such decrees were obtained.

Very respectfully,

E. B. KNIGHT,

Attorney for W. A. Stuart, Appellant.

14-618

FILED
APR 16
JAMES H. McKENNEY,
CLERK.

NOTE OF ARGUMENT FOR THE APPELLEES.

SUPREME COURT

—OF THE—

UNITED STATES.

OCTOBER TERM, 1887.

NO. 255.

WILLIAM A. STUART, APPELLANT,

vs.

C. S. GAY, MARGARET L. GAY ET ALS.

LEWISBURG:

DENNIS & ARGABRITE,
Printers.

1888.

Supreme Court of the United States.

OCTOBER TERM, 1887.

NO. 255.

WILLIAM A. STUART, APPELLANT,
vs.
C. S. GAY, MARGARET L. GAY ET ALS.

NOTE OF ARGUMENT FOR THE APPELLEES.

Although some nine errors are assigned in the petition of the appellant, still the record in the case, in connection with this assignment, presents really but two questions for the consideration and decision of this Court:

First, Whether the Court below erred in allowing interest, as it did, upon the amounts decreed in favor of the several creditors against the common debtor and which were made up by an aggregation of principal and large sums of interest, much of which had been due and unpaid for a great many years, from the date of said decree, or rather from the date to which the calculation of interest and this aggregation had been brought by the Master, and should interest have been allowed, as claimed by the appellant, not upon the *decree* from said date, but only on so much thereof as represented original principal, leaving the large amount of interest accrued and unpaid to remain and continue a non-interest bearing fund.

Second, Whether the Court erred in decreeing, under the circumstances of the case, a re-sale of the land, previously sold in the cause, in the manner and upon the terms prescribed by the decree entered on the 25th day of May, 1885, (Record, p. 118.)

This is a general creditors' suit, instituted in 1868, to subject the real and personal property of the White Sulphur Springs Company, an insolvent corporation, to the payment of its debts.

The controversy in this Court is confined to the real estate and its proceeds. W. A. Stuart, the appellant, is not made a party by the bill and, so far as the record discloses, he had no interest in its subject matter at the time the suit was instituted and all the rights or interest he now has are only such as he acquired *pendente lite*.

The cause was referred to a Master in Chancery to report the debts which were liens on the real estate of the defendant Company, with their respective amounts, dignities and priorities. And on the 21st day of April, 1876, he filed his final reports in respect to said matters, to which there was no exception. In this report, for each creditor entitled to a recovery, he stated an *entire sum*, made up of the principal of his debt and a large amount of accrued interest, aggregated and capitalized, which interest had been due and unpaid for from one to fourteen years or, upon an average, for more than seven years. The first six classes of debts, the only ones material to this appeal, amount to $299,857.88, of which $185.133.27 is principal and $114,724.61 is interest. The interest was calculated to and aggregated as of the same date, October 15th, 1875, as to all the debts, except the debts in the first class, known as the Singleton trust debt, upon which the unpaid interest amounting to $36,000 was calculated to July 1st, 1868, the Commissioner reporting that all interest accrued on this debt after that date had been paid, (Record, pp. 42 to 46 inc.) On the 28th day of April, 1876, the Court by its decree (Record, p. 37,) confirmed this report, without exception thereto or objection in any form, but on the contrary, as appears, (Record, p. 39,) by consent of parties, and in terms capitalized the said $36,000 interest, of the Singleton debt providing that it should bear interest from that date, but made no *express* declaration as to the interest of the other classes of debts.

The appellant contends that because of this express capitalization of the interest of one debt, the inference is that the Court did not intend a similar capitalization of the interest of any of the other debts. If the question here were, as it is not, what did the Court intend, and not, as it is, what is the legal effect of the decree, it would be sufficient to say that this express order as to this debt was obviously necessary, in order to prevent misapprehension and confusion, inasmuch as the Commissioner had brought this interest down to July 1st, 1868, a date long anterior, by more than seven years, to the date to which the other debts were calculated, and without this express declaration it might and, no doubt, would have been claimed that the aggregate amount of this debt should bear interest from that earlier date and not from the same time with the other debts.

But, whatever may have led to this provision in the decree, the view taken by the appellant as to its effect is simply an inference of fact and wholly insufficient to show that the Court intended to except, even if it had the power to do so, which is denied, all the other debts from the

operation of law in regard to interest in such cases, and to exclude the other creditors from its benefits. The whole frame and context of the decree are a strong contradiction of any such intention. The same may be said as to the order made May 4th, 1878, (Record, p. 78,) as to the interest for certain years on the bonds which constitute what is known as the Erskine debt, from which the appellant draws the same inference, that a mention of interest as to one or more debts implies an exclusion of such provision as to all debts not mentioned. But this order of May 4th, 1878, was simply made, for reasons stated and satisfactory to the Court, to put the interest of this Erskine debt for certain years, not evidenced by coupons, upon the same footing with the interest for those years for which coupons were given, and both this order and the express provision as to the Singleton debt in the decree of April 28th, 1876, so far from being contradictory to the view taken by the appellees and by the Court below as to the legal meaning and effect of said decree are in entire harmony and consistency therewith. Nor is there any more force in the view urged by the appellant that to allow to this decree the effect claimed by the appellees will be to allow, to some extent, interest upon interest to become itself an interest bearing fund, referring to the coupons, given originally for interest and which bear interest and would be capitalized just as the others. For it is well understood that coupons, though originally representing interest of the bond to which they are attached, from the time of there maturity are recognized and treated, whether severed from or still attached to the bond, as promissory notes, as independent evidences of debt, having lost the character and peculiarities of interest and standing just as other debts do, subject to the same rules and entitled to be capitalized in the same way.—9 Wall., 477; 14 Id., 282; 1 Id., 206; 3 Id., 332; 18 Gratt., 776; 3 McLean, 472; 1 Jones on Mortgages.

By confirming said report on April 28th, 1876, the Court thereby decreed to each creditor the entire amount reported in his favor. And each amount, by operation of law, as will be presently more fully shown, became an interest bearing fund from October 15th, 1875, the date in the report, except the Singleton debts, which, by said express provision, bear interest from the date of the decree. And if there be any error in this decree it is because it did not calculate, as perhaps in strictness it should have done, the additional interest from October 15th, 1875, to April 28th, 1876, and included it also in the aggregation, but this difference would be too small to deserve notice, and as this change would have been to the prejudice of the appellant, he cannot complain, because it was not done. And the rights of the creditors, the amounts to which they were respectively entitled, and their interest bearing character, having been all thus fixed on the 28th day of April, 1876, it follows that this appeal, taken more than nine years thereafter, was improvidently awarded, and can have no effect as to this decree.

Again, this aggregation and capitalization are the legal results of the

decree fixing the amounts of the debts and no express order to that effect, so stating, was necessary. The omission of the Court to make a formal order, which, if made, would be merely the declaration of a legal and necessary sequence, could not affect the legal import of the decree or deprive creditors of rights given by the law itself. But if such an order and declaration ought to have been made and the Court failed at the time to make it, then clearly it was permissible for it, at a subsequent time, to make such order, *nunc pro tunc*. And such was the order made January 5th, 1884, at the request of the Commissioners charged with the disbursement of the fund, (Rec. p. 102,) who, being embarrassed by the doubts suggested and by the construction placed upon the decree of April 28th, 1876, by the appellant, to relieve themselves from responsibility in the premises, applied, as they had a right to do, to the Court for instructions. This order being merely a judicial interpretation of said decree, a declaration of its purpose and intention, a *nunc pro tunc* order, being, as the appellant himself in his petition for re-hearing (Rec., p. 115,) characterizes it, "simply an interlocutory decree" (and, therefore, not appealable) "giving instructions to your Commissioners who made said sale," it had relation to the date of said decree and became a part of it, and can no more be affected by an appeal, taken nine years after the date of said decree, than can the decree itself. And if we are correct in our view of this order of January 5th, 1884, and if it was part of and had relation to the date of said decree, then of course, without regard to the correctness of that decree there was no error in the decree of May 25th, 1885, (Rec. p. 118,) refusing to rehear said order of January 5th, 1884, and confirming it in all respects.

Waiving this point for the present, and conceding, for the argument merely, that this question of interest can be reached and reviewed upon this appeal, then, it is submitted, the order and decree complained of are clearly right and must be affirmed. The Statute of the State of West Virginia on this subject, is as follows: "When there is a recovery on a bond conditioned for the payment of money, *as well as in all cases where a judgment or decree is rendered or made* for the payment of money, it shall be for the aggregate of principal and interest due at the date of the judgment or decree with interest thereon from that date, except in cases where it is otherwise provided."—Code of West Virginia, ch. 131, sec. 16, p. 627. And this Statute has been maturely considered and fully sustained by the Court of last resort in that State.--See *Flemming, Adm'r., vs. Holt*, 12 W. Va., 143, p. 167; *Ruffner, Donnally & Co.* vs. *Hewitt, Kerchival & Co.*, 14 W. Va., 737, p. 747.

In the Court below it was seriously maintained that as this is a chancery suit in which the practice is regulated by prescribed rules or, in their absence, by the practice in the high Court of Chancery in England, and not a Common Law proceeding in which the State practice obtains, and as it may therefore be reasonably inferred that the same position will be taken

here we may possibly be excused for referring to it. This is not a question of *practice* at all, but of law; interest is wholly the creature of statutory enactment, independent of it neither contracts nor judgments bear interest. If the State law fixed the rate at 4 per cent., or 10 per cent., or if it provided for and allowed compound interest, in all cases, instead of simple interest, the same rule would govern in the United States Courts sitting in that State, as will be shown by decided cases.—The provision quoted and under consideration provides for compound interest in certain cases and this, a matter of express, positive, statutory law, by parity of reasoning will be respected in the United States Courts sitting in West Virginia.

This question seems to have been expressly decided by this Court; a Statute of Kentucky allowed interest, on a certain class of judgments, just as the West Virginia Statute does on all, and this Court held that it applied to United States Courts, and was obligatory there just as in the State Courts.—*Sneed et als vs. Wister et als.*, 8 Wheat, 691.

When the law permits interest upon interest, as the laws of Wisconsin did in 1857, no change in the law and no legislative construction of that law can change the right of the creditor to recover interest upon interest. *Koshkonong vs. Burton*, 14 Otto., 668.

Interest on decrees in the United States Courts is the same as in the State Courts.—*Railroad Co. vs. Turrill*, 11 Otto., 836.

In deciding questions of interest the Federal Courts follow the local law.—"*The question is always one of local law.*"—*Holden vs. Trust Co.*, 10 Otto., 72; *Goddard vs. Foster*, 17 Wallace, 123; *Cromwell vs. County of Sac.*, 94 U. S., 351. Judgments at law and decrees in chancery on affirmance carry interest at rate allowed in State where rendered.—*Hemmenway vs. Fisher*, 20 How., 255; *Perkins vs. Fourniquet*, 14 How., 328; *Simmons vs. Garrett*, McCahon, 82; *Reeside vs. United States*, Dev., 216; *Mitchell vs. Harmony*, 13 How., 115.

And not only will the United States Courts in questions of interest follow the local *law*, where there is one, but, in the absence of such law, will "conform to the custom which obtains in the community in dealings of this character."—*Young vs. Godbe*, 15 Wall., 562.

In the case of *Perkins vs. Fourniquet*, 14 How., *supra*, there had been a decree in the Circuit Court of the Southern District of Mississippi for a gross sum with legal interest thereon, 8 per cent., from the date of the decree, and upon appeal this Court finding no error therein affirmed said decree and allowed damages at the rate of six per cent., per annum, (13 How.,) and upon a subsequent appeal (14 How., 328,) it was held that from the time of affirmance the said decree ceased to bear the legal Mississippi rate of 8 per cent., and would from that time bear only the six per cent. allowed as damages. But this was prior to the adoption of the 23rd Rule of this Court whereby decrees in equity are, upon affirmance,

put on the same footing with judgments at law and bear interest at the same rate, from the date of the decree, that similar decrees bear interest in the State Courts. And it is respectfully submitted that, under the authority of this case and by operation of Rule 23rd, the Court, in the case at bar, will affirm the decree of the Court below and provide that the amounts recovered shall, from the date of such affirmance, continue to bear interest, as they have been doing from the date of said decree, at the same rate which prevails in the State Courts; that is at six per cent., the legal rate in West Virginia.

And in the case of *Burgess vs. Seligman*, 107 U. S., p. 20, this Court says "that since the ordinary administration of the law is carried on by the State Courts, it necessarily happens that, by the course of their decisions, rules are established which become rules of property and action in the State and have all the effect of law, especially with regard to the law of real estate and the construction of State Constitutions and Statutes.—Such established rules are always regarded by the Federal Courts no less than by the State Courts themselves as authoritative declarations of what the law is; and, for sake of harmony and to avoid confusion, the Federal Courts will lean towards an agreement of views with the State Courts if the question even seems to them balanced with doubts. For the United States Courts endeavor to avoid, and, in most cases, do avoid unseemly conflict with the well considered decisions of the State Courts."

If there were no State statute, or, being one, if it were of no avail in the Federal Courts, and were this a mere question of *practice*, still the decree and order complained of are clearly right. The 23rd Rule of this Court provides:

1. In cases where a writ of error is prosecuted to the Supreme Court and the judgment of the inferior Court is affirmed the interest shall be calculated and levied from the *date of the judgment below* until the same is paid at the same rate that similar judgments bear interest in the Court of the State where such judgment is rendered.

2. The same rule shall be applied to decrees for the payment of money in cases in chancery, unless otherwise ordered by the Court.

Now, no fault is found with the decree or order under consideration as to the amounts decreed and allowed or in any respect except that the Court below allowed interest on said amounts from the date of decree; and it is, therefore, apparent that the decree as rendered must be here affirmed; and, this being done, it will necessarily follow, from this affirmance and by operation of the above rule, that the said amounts will bear interest at the legal rate, whether they ought to have done so or have done so before or not, from the date of said decree, *and this is all the appellees claim.*

And were there neither State statute nor prescribed rule of practice and we had to look to the practice in the high Court of Chancery in Eng-

land, still that practice is in accord with the appellees' contention.—"When the Court enlarged the time, in case of a decree of foreclosure, for payment, it did so only upon condition that principal and interest should be aggregated and capitalized."—*Beckham vs. Cross*, 2 Ves., 471; *Bennett vs. Edwards*, 2 Vern., 392. When computed by a Master the interest becomes principal and bears interest.—*Bacon vs. Cleek*, 1 P. Wms., 480. Interest was considered principal from date of Master's report.—*Turner vs. Turner*, 1 J. & W., 47; *Perkyns vs. Baynton*, 1 Bro. C. C., 574; *Brown vs. Backham*, 1 P. Wms., 453; *Astley vs. Powis*, 1 Ves., 496. The proper course, on a Master's report, is to add the interest to the principal and compute interest on the aggregate sum.—*Raphael vs. Boehm*, 11 Ves., 93., 109. And, following these decisions and practice, in *Dunbar vs. Woodcock*, 10 Leigh., (Va.) 628, it is held, that although accrued interest does not bear interest from the time it accrued, still it does bear it from *date of decree*.

And, upon this first question, it is therefore respectfully submitted that as to the decree of April 28th, 1876, and the order made January 5th, 1884, in explanation and interpretation of said decree, this appeal must be dismissed as improvidently awarded. And, if not, that then, whether we look to the Statute of the State and the former decisions of this Court, or to the rules governing practice in Equity, or to the practice in the high Court of Chancery in England, the said decree and order are plainly right and must be affirmed.

Second, Did the Court below err in decreeing, under the circumstances of the case, a re-sale of the land previously sold in the cause in the manner and upon the terms prescribed by the decree entered on the 25th day of May, 1885, (Rec., p. 118)?

This is no longer a practical matter, and is, in fact, little more than a moot question, nothing but the costs of this appeal being involved, for the statement will not be controverted that, since this appeal was allowed, the property in question has been re-sold, by another proceeding, in a different forum, but in satisfaction of the same debts, together with others, and bought by the appellant, W. A. Stuart, himself.

Pursuant to a decree of sale in said cause, entered on November 19th, 1879, (Rec., p. 89,) the said property was sold on March 31st, 1880, and W. A. Stuart, the appellant, became the purchaser, and this sale and purchase afterwards by a decree passed on the 4th day of May, 1880, (Rec., p. 92,) were confirmed. And on May 12th, 1885, *more than five years after said sale*, the said Stuart was in default in the payment of purchase money, past due, in the large amount of $160,212,06, and this fact having been reported to the Court by the Commissioners, charged with the collection and disbursement of the fund, on their motion, and to enforce payment, the Court, by an order entered on that day (Rec., p. 109,) awarded a rule against the purchaser requiring him to appear and show

cause, if any he could, why said property should not be re-sold at public auction for cash to pay the unsatisfied instalments of purchase money which were then all due, &c., &c. The said rule having been regularly served, (Rec., p. 110,) the said Stuart, defendant therein, appeared and first moved to quash it, and, this motion having been overruled, he then filed his answer, with exhibits, to which the said Commissioners, plaintiffs in said rule, replied generally, and the questions arising thereon having been argued by counsel, and Stuart having declined, *as unnecessary*, the further time tendered him to make settlement with the Commissioners, the said rule was made absolute and the Court proceeded to decree against said Stuart, and in favor of said Commissioners, the amount then due from him on account of said purchase money and to direct, if this were not paid within 30 days, a re-sale of said property at public auction for cash, (Rec., pp. 118–119–120,) and this is the decree complained of.

The appellant insists, in his petition and assignment of errors, (Rec., pp. 136, 137,) that said rule should have been quashed and discharged, no sufficient cause for awarding it having been shown and that a re-sale could not properly be decreed by the summary process of a rule, and that this could only be accomplished by an original suit in equity. But surely "sufficient cause" was shown in the fact, reported by the Commissioners, and not denied, that this large amount of purchase money was past due and unpaid, and in the further fact that the creditors, who had been waiting for well on to three score years, were entitled to be paid and to have the aid of the Court to compel the settlement of their debts. And, as to the manner of proceeding, a purchaser under a decree becomes a party to the suit, submits himself to the jurisdiction of the Court as to all matters connected with the sale, or relating to him in the character of a purchaser.—*Requa vs. Rea*, 2 Paige, 339; 2 Dan'l Ch. P., (margin,) p. 1460, n. (1). And in the English Chancery practice, when a sale is confirmed, a deed is made to the purchaser with surrender of title deeds relating to the property; and, then, if he makes default in payment *an order is at once made* for a re-sale at his risk and cost.—2 Dan'l Ch. Pr., (margin,) 1459–60–61–62; *Harding vs. Harding*, 4 M. & C., (18 Eng. Ch. R., 514, Lord Cottenham). And that the same practice is recognized and established in Virginia and West Virginia is shown by the case of *Clarkson vs. Read et als.*, 15 Grat., 288, where the whole doctrine is fully discussed and the authorities are cited. Moreover, between the proceeding, insisted upon as necessary by the appellant and that adopted by the Court, the difference is entirely one of name and form and not at all of substance. The purchaser was called upon by the rule to appear and answer, just as he would have been by a subpœna in chancery; he did appear and moved to quash, just as he would have demurred to a bill; he then filed his answer to which there was a general replication; the issue was made up and argued by counsel, and if the defendant in the rule had desired further time to bring in proofs it would no doubt have been al-

lowed him, but, so far from desiring it, he expressly declined it when tendered to him. And, as the Court of Appeals of Virginia says, Judge DANIEL delivering the opinion, in *Clarkson* vs. *Read*, 15 Gratt., p. 298, "A rule in such a case apprises the purchaser of the nature of the demand against him as fully as a bill could do. And the only additional office that a bill could perform, would be to recite, in more formal manner, matters which he already knows—or which the law presumes that he already knows. If he has any cause to resist the demand, he can set it forth as fully in an answer to the rule as in an answer to a bill. And if in his answer to the rule he should show any reason why there should be no re-sale of the property, it would be just as incumbent upon the Court to allow him an opportunity to bring forward his proofs as it would have been, had the same matter been averred in an answer to a bill."

And this reasoning applies, with quite as much force, to a case, like the present one, when the Court has made a deed to the purchaser, retaining a lien for the unpaid purchase money, and which we have seen is the regular English practice, as it does to a case when no deed has been made; for equally in both cases the purchaser is a party to the suit, subject to the jurisdiction of the Court and amenable to its process. And no reason can be suggested why a Court should have the power, as it unquestionably has, when no deed has been made, to enforce the payment of purchase money by a rule, which does not also and equally show that a Court must have like power to enforce in the same way a vendor's lien retained in a deed for property sold under its decree. It is true that the appellant had conveyed the property to the Greenbrier White Sulphur Springs Company, but we do not see how this fact can strengthen his position. This sub-purchaser was a purchaser *pendente lite*, which bought with full notice of all the facts, which knew exactly how the title stood, and was acquainted with the character of the deed to Stuart, the lien therein retained, the control of the Court over the property, and of its power to compel payment by a rule, and as such purchaser it can claim no privileges or immunities greater than its vendor himself can claim.—And, if any advantage can be taken at all, by reason of this sub-purchase, in the way of an objection to a re-sale upon a rule, it surely must be taken by the sub-purchaser, who makes no defence or objection, for certainly it cannot inure to the benefit of the appellant, who bought directly from the Court, and who is here alone complaining.

The appellant further says, that no re-sale should have been ordered because the property had been sequestered and placed in the hands of a receiver under the order and decree of Judge BOND, of the Circuit Court of the United States, at Parkersburg, W. Va. Now, by reference to the record at page 127, it will be seen that this order of sequestration was made on the 13th day of April, 1883, in a suit instituted on that day, *fifteen years* after the institution of this suit in the United States District Court, exercising Circuit Court powers and sitting at Charleston, and

more than three years after said sale to Stuart; and it will be seen further that it was a suit instituted by *W. A. Stuart himself*, the appellant and the purchaser! Now, would it not be a most anomalous and remarkable state of things, if a purchaser, at a judicial sale, could wrest himself from the jurisdiction of a Court, under whose decree he had purchased, tie its hands, and deprive it of all power to enforce the payment of the purchase money due it, except upon leave, first sought and obtained, from another Court of equal and co-ordinate power and jurisdiction, by simply going into that other Court, there himself bringing another suit, and having the property sequestered? An effort on the part of the learned counsel for the appellant to maintain by argument such a proposition as this cannot be anticipated.

The sale of March 31st, 1880, at which Mr. Stuart became the purchaser, was made on the unusually long credit of five years; but, at the end of that time, there was still due and unpaid of the purchase money, more than $160,000, and still he insists that the re-sale should not have been for cash and that it was a hardship upon him so to order it, and he assigns this as an error in the decree of May 25th, 1885. If this were a hardship on him it was only the consequence of his failure to comply with his contract and a hardship from which he could relieve himself by paying the money as he had agreed to do, and for this, further time, 30 days, was allowed. But how was it as to the creditors? The record shows that of the creditors in the first six classes, and these alone participate in the proceeds of said sale, much the larger part in amount, had waited for their money more than *forty years* and the others almost as long, when the sale was made, and that all of them, when the re-sale was directed, had waited more than that length of time, and upon them it would have been indeed a very great hardship to impose, without fault or default on their part, further delay. Besides, the terms of the re-sale was a matter entirely in the discretion of the Court and, unless this discretion were greatly abused, its action in that respect will not furnish a proper subject for review here.

As to the 7th error assigned, viz., the aggregation, in the decree of re-sale, of the principal and interest of Stuart's last two bonds and the capitalization of said interest, it is unnecessary to add anything to what has been said on that subject in the first division of this argument, and which is here referred to in this connection.

In the 8th assignment, in his petition, the appellant insists, that there should not have been a decree for the full amount of the last two bonds, because he was the owner of a bond, part of the Erskine trust, and known as the Boyd or Johnson bond, which would be paid out of the proceeds, and that he should have had credit for this bond, that its amount should have been deducted from his indebtedness and the decree passed only for the balance then remaining. It might be sufficient, in reply, to say that if Mr. Stuart was entitled to credit for this bond, as for so much money

on his indebtedness, he could doubtless have gotten it by settling with the Commissioners, and in no other way. Now, the record shows (see decree of re-sale, p. 119,) that, notwithstanding the repeated and unusual efforts made by the Commissioners to have a settlement with him, he was never ready or able to make such settlement, and consequently these efforts always failed. And thus, without any fault of the Commissioners, having neglected to secure such credit, the deduction was not, as indeed it could not have been, made in the decree. But a closer inspection of the record will show another and a better reason why such credit was not given. For on looking to the report of the Commissioners, on page 103 of the record, it will be seen that certain debts, in classes 2, 4 and 5, still remain unpaid; now, these debts do not belong to Stuart and are all superior in dignity to the debt for which he claims that credit should have been allowed him, and which belongs to class 6; and so long as these other debts, which could only be discharged in money, remained unpaid no part of the proceeds of his land bonds was applicable to his debt, and, hence, the credit was not, because it could not be, given. And, further, Stuart either was or was not entitled to turn in this debt as so much money and have it deducted from his indebtedness; now, if he was not, then the decree as rendered is correct; and if he was, then he could still turn it in by the same right, and have it credited as cash upon the decree for re-sale; and, hence, there is nothing in this decree, in this particular, to his prejudice or of which he can be heard to complain.

What has been said in reply to the 8th error assigned will apply, and with greater force, to the 9th: The appellant's position here is, that because he had personally assumed the payment of two bonds of the Erskine trust at times which had not arrived at the date of said decree, that, therefore, to the amount of these bonds, or to the extent to which they were entitled to share in the proceeds of sale, it was error to decree a re-sale. By reference to his contracts concerning these bonds, (Rec., p. 117,) it will be seen that as to one, the Crockett bond, held by Price, trustee, he had simply guaranteed its payment, *in case the proceeds of sale were insufficient*, in ten years from April 23rd, 1875. And, hence, it is manifest, that as to this debt the time fixed by this contract for him to pay had passed at the date of the decree for a re-sale, and consequently, whether this debt was to be paid out of the proceeds of sale, or by Stuart on his guarantee, the creditor, in any event, was entitled to his money; and it was entirely proper to order a re-sale that he might be paid.

As to the other bond, held by Mrs. Gay, or by her trustee, Stuart simply agreed that at the sale to take place on Mar. 31st, 1880, he would bid enough to cover her debt, or would make good the deficiency. But the Court could not consider these private arrangements between parties, and modify its decrees and postpone the collection of purchase money due in accordance therewith. Stuart, by his contracts either did or did not acquire control and ownership of these bonds, and it is very clear that he

did not. If he did, however, then he would be entitled to credit for their amounts upon the decree of re-sale, which would, therefore, work him no injury; and if he did not, then it was right for the Court to enforce the payment of the unpaid purchase money so that it might be distributed as soon as possible to the persons entitled thereto. Or, if Mr. Stuart were the owner of these bonds, upon payment of the decree he could at once, having satisfied the Commissioners of his rights in the premises, call upon them to re-pay him the amount of these debts; and, if he did not wish, or if it were not convenient for him to pay this much money, which would be returned at once, he could, to this extent, have made payment by giving his receipt for this amount and still have enjoyed the benefit of any further time secured by his contracts with the former holders of the debts. And, hence, in every view that can be taken, no ground is furnished by the appellant's connection with these debts of the Erskine trust, as set forth in his 9th assignment, for alleging error in the decree of re-sale.

And, as to this, the second question in the case, the appellees also submit respectfully that the decree complained of should be affirmed.

Alex. D. Mathews.

For Appellees.

ADDENDUM.

Since the foregoing note was prepared we have seen the argument for the appellant and desire to reply briefly to some of its positions.

The appellant speaking of the rule for re-sale, (p. 6 of his brief,) says: "The rule was issued May 12th, 1885, returnable to May 23rd, 1885, but on the return day the rule was not docketed and no notice was taken thereof, and no proceedings could be afterwards had on this process. A rule was docketed on the 22nd day of May, 1885, erroneously assuming that to have been the return day, but such a proceeding had upon this process before it was returnable was simply void and could not affect the defendant's right. He was required by the rule to show cause on the 23rd day of May why a re-sale of the property should not be had. On the 23rd day of May, the return day of the rule, no action is had upon the rule by the Court and no notice is taken thereof. The defendant had a right to assume that the proceeding was abandoned and could not be required to answer or show cause against the rule at any subsequent day." Now, it would be difficult to understand how such an opinion or assumption on the part of the defendant could be defended, even of he had been ignorant, and had no notice, of this alleged premature docketing of the rule, and it is still more difficult since the record shows, (p. 110,) that at the *very time* at which this was done he was present in Court, filed a petition with exhibits, and must necessarily have known all about it. And, if such was his opinion, it must have been speedily corrected, because, on the third day thereafter, on the 25th day of May, 1885, (Record, p. 118,) he appeared and made defence to said rule by a motion to quash and by an elaborate answer. And even if he had a right, as claimed, to assume, because the rule was returned and docketed on the 22nd and was not formally docketed on its return day, the 23rd, that the proceeding was abandoned it is very certain and apparent that he did not so assume inasmuch as he appeared and made his defence on the 25th, as above stated. And it is submitted that this docketing on the 22nd, and the omission to make a formal order to that effect on the 23rd, could not, under the circumstances as disclosed by the record, have taken the appellant by surprise or done him injury in any way. The purpose and effect of process of this kind, made returnable on a day named, is to fix a time before which the defendant therein need not appear, but on and *after* which he may, if he desires, be heard; and it is not intended that an officer charged with the execution of such process must retain it in his hands until the return day arrives, for he may as soon as he has dis-

charged his duty, by serving it, return it to the Court from which it issued, and it should be placed upon the docket on the return day, to be called up then or afterwards, as was done in this case.—When a rule, returnable to a certain day has been served it is the duty of the Clerk *on that day* to put it on the docket, and his failure to discharge his duty should not prejudice either party. The party summoned to answer is sufficiently advised by the rule what he is to answer, and when and where; and it is his privilege to appear and do so or else let the matter go by default, at his peril, if he so prefers.—*O'Brien vs. Camden*, 3 W. Va., p. 20. But this question is necessarily eliminated, from the case under consideration, by the fact that the defendant appeared and made full defence, and, hence, could not have been surprised or misled by inquiring for and failing to find an order made on the 23rd day of May, 1885, docketing the rule.

The appellant submits, with his brief, a statement and calculation to show the amount in controversy, being the difference between the two methods of computing interest, and it is, very humbly, suggested that he thereby most effectually shows himself out of this Court. If Stuart, the appellant and purchaser, were the owner of *all* of the debts to which the proceeds of sale must be applied it would, of course, be entirely immaterial to him whether the interest were counted in one way or the other, since, in either way, he would get all the money, and just so the method of computation makes no difference to him so far as he does own these debts, and he is only affected by this question, and it is only a matter in dispute here to the extent that said debts are owned by other persons. An examination of the record will show that the only debts not owned by Stuart, which will participate in the proceeds of sale, are those owned by A. F. Mathews and Bonds Nos. 126 and 130 Class 4, and Bond No. 126 Class 5. (Record, pp. 44 and 45)—see appellant's brief, p. 8); as to Mathews' debts the difference in the two methods of computation is only $4,053.71, (see appellant's brief, p. 22,) and the interest accrued upon both the principal and coupons of said bonds 126, 130 and 125 on the 15th of October, 1875, is $1,536.44; and by capitalizing this interest, and counting interest upon it from October 15th, 1875, to March 31st, 1883, we have $687.50 to be added to the above $4,053.71, making the entire amount involved only $4,741.21, which is below the jurisdictional amount of this Court; and for this further reason it is respectfully submitted that as to this, the first question presented, the appeal must be dismissed. Again, the appellant, (Brief, p. 16,) seeks to avoid the effect of his failure to file a petition to re-hear the order of January 5th, 1884, within the time prescribed by the equity rules of the Court, by now claiming that this was itself an appealable decree, although it is apparent that this order was, as the *appellant himself* describes it, in his petition for re-hearing, (Record, p. 115,) "simply an *interlocutory* decree, giving instructions

to the Commissioners who made said sale," and that as the appellant says in his petition for appeal, (Record, p. 134,) referring to this order of January 5th, 1884, "the Court by an order of that date *instructed* said Commissioners in disbursing said proceeds," &c. And it is equally apparent that the amount to which each creditor was entitled was decreed, and its interest bearing character fixed, by the decree, confirming report of Commissioner Mathews, (Record, p. 37,) which was passed on the 28th day of April, 1876, more than nine years before this appeal was allowed.

Respectfully submitted,

Alex. F. Mathews.

For Appellees.